U. S. Department of Justice
Office of Juvenile Justice and Delinquency Prevention

Reauthorization Meeting Issue Papers

Juvenile Justice Amendments of 1980 (Public Law 96-509)

Kansas City, Missouri
February 12 & 13, 1981

REAUTHORIZATION MEETING
ISSUE PAPERS

JUVENILE JUSTICE AMENDMENTS OF 1980

KANSAS CITY, MISSOURI

February 12 and 13, 1981

PREFACE

REAUTHORIZATION MEETING ISSUE PAPERS

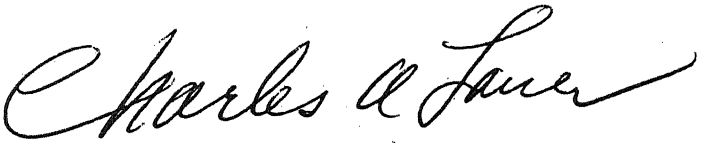
JUVENILE JUSTICE AMENDMENTS OF 1980

These papers have been developed from the Juvenile Justice Amendments of 1980 and its legislative history. Each paper attempts to cover a single topic or grouping of related topics and includes possible guideline language for implementation of new provisions. In addition, issues which were identified either prior to or during the Kansas City Conference are listed and the OJJDP response to the issue indicated.

The responses to the issues which were discussed in Kansas City on February 12-13, 1981 contain a mixture of legal and policy matters. Final legal and policy decisions, based in part on input received at the Kansas City Conference, and other input mechanisms designed to insure that a full range of viewpoints are considered, will form the basis for draft regulations which will be published by OJJDP in the Federal Register. The target date for regulations is May 15, 1981.

The Office of Juvenile Justice and Delinquency Prevention acknowledges the assistance contributed to this effort by the National Criminal Justice Association, which sponsored the Kansas City Conference. OJJDP also wants to express its appreciation to the Office of General Counsel, OJARS, and to the Congressional staff members who contributed their views in Kansas City.

The Federal budget for Fiscal Year 1982 is pending at this time. The future of the Juvenile Justice Act program, as is true of many Federal programs, is uncertain. However, the work on these issue papers has been completed, and we see no reason to delay distribution to those who were in attendance at the Kansas City Conference.



Charles A. Lauer
Acting Administrator
Office of Juvenile Justice and Delinquency Prevention

March 6, 1981

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SUMMARY OF THE JUVENILE JUSTICE AMENDMENTS OF 1980

On December 8, 1980, President Carter signed into law S. 2441, the Juvenile Justice Amendments of 1980 (Public Law 96-509). The reauthorization legislation, the product of strong bipartisan support in both Houses of Congress, continues the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, for an additional four year period.

The major areas of change in the 1980 Amendments involve the establishment of an independent Office of Juvenile Justice and Delinquency Prevention (OJJDP) to administer the Act's Title II programs, expansion of the membership on the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention (Council), a restructuring of the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC), significant revisions in the State formula grant program, new restrictions on lobbying activities by Juvenile Justice Act fund recipients, a clarification of the Act's continuation funding policy and new areas of emphasis in the programs established under the 1974 Act as amended in 1977.

OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Since 1974, OJJDP has been an office within the Law Enforcement Assistance Administration (LEAA) and subject to the direction of the LEAA Administrator. In order to give increased autonomy and visibility to the program, the Amendments establish OJJDP as a separate entity under the Office of Justice Assistance, Research, and Statistics (OJARS) structure in the Department of Justice. OJJDP will be under the general authority of the Attorney General. The Administrator of OJJDP will have full operational and administrative authority and responsibility for the implementation of Title II programs with OJARS providing staff support and coordination to OJJDP, as well as to LEAA, the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS). The Administrator remains a Presidential appointee with two statutory Deputy Administrators appointed by the Attorney General.

CONCENTRATION OF FEDERAL EFFORT

The reauthorization provides for expanded membership on the Federal Coordinating Council, the body charged with responsibility for coordination of all Federal juvenile delinquency programs. The additional new members are the following agency heads — the Secretary of Education, the Director of the Community Services Administration, the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Director of the Office of Special Education and Rehabilitation Services, the Commissioner for the Administration for Children, Youth, and Families, the Director of the Youth Development Bureau, the Director of OJARS, the Administrator of LEAA, and the Director of NIJ. The Council will review and assist in cooperative Federal funding efforts between the Office and any member agency of the Council.

The National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC) is completely restructured by the Amendments. Duties are consolidated with the following major functions identified: (1) advise the Administrator of OJJDP, the National Institute for Juvenile Justice and Delinqency Prevention, and the National Institute of Justice; (2) review and evaluate Federal juvenile delinquency policies and activities; and (3) continue current efforts to refine juvenile justice standards and recommend action to facilitate the adoption of such standards throughout the United States. S. 2441 streamlines the NAC by reducing its membership from 21 to 15 members, at least 5 of whom must be under the age of 24 at the date of their appointment. The Act also mandates full-time staff support, appointed by the Chairman, and provides that members may serve until replaced at the end of their terms.

The reauthorization limits funding for the Concentration of Federal Efforts program to 7.5% of the total appropriation for Title II and further limits support to the Coordinating Council and the National Advisory Committee to a maximum of $500,000 each per fiscal year.

FORMULA GRANT PROGRAM

The Amendments make a number of changes to the State plan requirements that are designed to reduce paper work yet establish, for the first time, a comprehensive and statewide juvenile justice program coordination effort. These changes include provision for a three year plan submission with annual program updates, performance reports, and a description of the State's status in terms of compliance with statutory plan requirements. In addition, the State plan format is revised to include a juvenile crime analysis, determination of program needs, description of services to be provided, and the establishment of performance goals and priorities. Programs to be implemented must then be related to other existing or planned State or local programs that will address the problems identified. Finally, there must be a plan set forth for the coordination of all State juvenile delinquency programs.

The criminal justice council established in each State under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, (Crime Control Act) continues as the State agency designated by law to supervise the preparation and administration of the State plan. However, the Administrator is authorized, if insufficient funds are available under the Crime Control Act formula grant program, to approve any appropriate State agency designated by the Governor as the supervising agency. In addition, the Administrator may establish and approve alternate administrative and supervisory board membership requirements for the supervising agency, including the designation of the State advisory group as the Supervisory board for such agency.

The State advisory group minimum membership is reduced from 21 to 15 with the maximum remaining at 33. At least one-fifth must be under the age of 24 at the time of appointment. Membership must now include locally elected officials. The State advisory group's existing role in advising the Governor and legislature is strengthened by the addition of a requirement

that recommendations be submitted annually with respect to matters related to the statutory functions of the State advisory group.

The Amendments add a new Section 223(a)(14) to current law which requires participating States to plan for and accomplish the removal of juveniles from jails and lockups for adults. This major reform effort is to be accomplished within five years, with States that are in substantial (75%) compliance at the end of five years being granted up to two additional years to achieve full compliance if the State has made an unequivocal commitment to achieving full compliance.

In implementing the jail removal amendment, the Administrator is directed to promulgate regulations which recognize the special needs of areas characterized by low population density with respect to the detention of juveniles. These regulations will permit the temporary detention in adult jails and lockups of juveniles accused of serious crimes against persons, where no existing acceptable alternative placement is available, in such areas.

The Administrator, within 18 months of the date of enactment, is also required to submit a report to the Congress relating to the cost and implications of the new jail removal requirement. The report will detail cost to the States, the experience of States currently requiring removal of juveniles from jails and lockups, possible adverse ramifications of removal, and recommendations for legislative or administrative action.

The new jail removal requirement complements the Act's ongoing system reform provisions -- deinstitutionalization of status and non-offender juveniles and separation of juvenile criminal-type offenders from adult criminal offenders. States are also required to modify current plans to address the new jail removal mandate.

The Amendments statutorily define the terms "secure detention facility" and "secure correctional facility," as these terms are used in the deinstitutionalization requirement of the Act, in a manner that conforms with current State practice and the OJJDP guideline definition of the term "secure."

The deinstitutionalization provision is modified by an amendment that exempts juveniles who commit offenses which constitute violations of valid court orders from the requirement. The amendment is designed to enable juvenile courts to respond to status offenders who chronically and habitually run away, refuse to accept court ordered treatment, or otherwise flaunt the lawful orders of the court. In order to be institutionalized for the violation of a valid court order, a juvenile must have:

(1) been adjudicated a status offender and made subject to a juvenile court order;

(2) received adequate and fair warning of the consequences of the violation;

(3) received the full range of due process rights enumerated in the In Re Gault decision.

In addition, the court must determine that no rational alternative to institutionalization is available in order to invoke the disposition of placement in a secure correctional facility for the court order violation.

The substantial compliance standard for deinstitutionalization, which required a 75% reduction in combined juvenile detention and correctional facility placements by the end of three years of participation, was modified. The Act now permits States that report no status offenders or non-offenders placed in secure correctional facilities to be considered in substantial compliance, even if the overall reduction rate is less than 75%. Full compliance is still required by the end of five years.

S. 2441 includes a State's progress toward meeting the new jail removal requirement within the scope of the formula grant program monitoring requirements. The Amendments also exempt from these annual monitoring requirements those States that have fully complied with the deinstitutionalization, separation, and jail removal requirements and which have enacted State laws which conform to these requirements. In addition, the Administrator must determine that such laws contain sufficient enforcement mechanisms to insure that the State legislation is administered effectively.

The Amendments modify the formula for reallocation of unobligated formula grant funds. They provide that the OJJDP Administrator shall endeavor to make non-participating States' allocations of formula funds available to local public and private nonprofit agencies in those States for use in accomplishing deinstitutionalization, separation, or jail removal. Any remaining unobligated formula grant funds must then be made available on an equitable basis to participating States that have achieved full compliance with the deinstitutionalization and separation requirements.

SPECIAL EMPHASIS PREVENTION AND TREATMENT PROGRAM

The Juvenile Justice Amendments of 1980 require that assistance provided under the OJJDP discretionary grant program be available on an equitable basis to deal with disadvantaged youth, including females, minorities, mentally retarded, and emotionally or physically handicapped youth. In addition, 5% of the Special Emphasis fund must be set aside to meet the special needs and problems of juvenile delinquency in the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Special Emphasis funds that revert to OJJDP must be made available in an equitable manner to States in compliance with the deinstitutionalization and separation requirements for the purpose of developing Special Emphasis subsidy and other financial incentive programs.

NEW PROGRAM AUTHORITY AND EMPHASIS

The Amendments add a statutory finding that the juvenile justice system should give additional emphasis to the problem of juveniles who commit serious crimes, particularly in the areas of sentencing, dispositional resources, and rehabilitation. In addition, Congressional policy is established to assist State and local governments in removing juveniles from jails and lockups for adults and to focus resources on maintaining and strengthening the family unit.

The listing of advanced technique programs, which must account for 75% of a State's formula grant funds, is expanded to include programs for juveniles who have committed serious crimes. New emphasis is placed on the development of statewide programs through the use of subsidies or other financial incentives to units of local government which are designed to: (1) remove juveniles from jails and lockups for adults; (2) replicate exemplary juvenile programs identified by NIJ; and (3) establish and adopt, based upon NAC Standards, juvenile justice Standards within the State. Other new advanced technique areas include programs designed to recognize and provide for learning disabled and handicapped juveniles and projects which seek to channel juvenile gangs and their members into constructive and lawful activities.

The Special Emphasis program adds a subsidy provision identical to that added to the formula program, new training authority for system personnel to more effectively recognize and provide for learning disabled and handicapped juveniles, and a new programmatic emphasis on juveniles who commit serious crimes.

GENERAL PROVISIONS

The Act is amended to prohibit the use of Juvenile Justice Act funds for specified activities by recipients of advocacy grants under the formula and Special Emphasis programs. In addition to other Federal lobbying prohibitions, such funds may not be used, directly or indirectly, to lobby members of Congress or other Federal, State, or local elected officials or governing bodies. However, the new restriction does not prohibit communications when made at the request of such officials through proper channels.

Section 228(a), which established a continuation policy for programs funded under Title II of the Act, was deleted by the Amendments. This action was not a repudiation of the Congressional policy favoring long-term funding of programs and projects in appropriate circumstances. Rather, it was intended to make clear that no recipient of Juvenile Justice Act funds, other than States eligible for formula grants, have any right or entitlement to annual program or project funding. The authority of a State to use up to 25% of its formula grant funds as match for other Federal programs was also deleted.

AUTHORIZATION AND ADMINISTRATIVE PROVISIONS

The Juvenile Justice Amendments of 1980 establish a four year authorization for OJJDP's Title II programs at an authorized appropriation level of $200 million for each of fiscal years 1981 through 1984. This is the same level as authorized under the prior legislation for fiscal year 1980. In addition, the bill incorporates a number of administrative provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, including consultation and rulemaking authority, hearing and appeal procedures, reimbursement authority, civil rights compliance, recordkeeping requirements, and restrictions on the disclosure of research and statistical information.

RUNAWAY AND HOMELESS YOUTH ACT

The Amendments also reauthorize Title III of the Act which established the Runaway Youth Act, renaming it the Runaway and Homeless Youth Act. This program is administered by the Office of Youth Development, Department of Health and Human Services. Amendments to the program include a requirement for equitable distribution of grants among the States based on population under 18 and several additional program authorities: (1) supplemental funding to develop model programs to address the needs of chronic runaways; (2) training of youth center and other personnel in recognizing and providing for learning disabled and other handicapped juveniles; and (3) grants to provide a national communications system to assist runaway and homeless youth to communicate with their families and with service providers. The program is also reauthorized for four years at an authorized appropriation level of $25 million for each fiscal year.

COPIES OF THE ACT AS AMENDED

Copies of the Juvenile Justice Act, incorporating the Juvenile Justice Amendments of 1980, should be available from the Government Printing Office within the next four to six weeks.

Prepared by: Office of General Counsel
Office of Justice Assistance,
Research, and Statistics

December 10, 1980

FORMULA GRANT 3 YEAR PLAN REQUIREMENT AND ANNUAL APPLICATION PROCESS

I. Evaluation of the Amendment

The newly established plan and annual application process for formula grant funds under the Juvenile Justice Amendments of 1980 reflects a Congressional objective of reducing the paper work requirements placed on States participating in the formula grant program, and to bring Juvenile Justice and Delinquency Prevention Act plan requirements into conformance with State plan requirements established by the 1979 reauthorization of the Omnibus Crime Control and Safe Streets Act. Section 223(a) provides the following new formula grant plan requirement:

> "In order to receive formula grants under this part a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs and the state shall submit annual performance reports to the administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with state plan requirements." ...

The application for FY 1982 Formula Grant funds required for submission to OJJDP is defined as an application based on a total integrated analysis of the State's juvenile justice and delinquency prevention problems, in which goals and objectives for program performance have been set and prioritized.

Draft guidelines under development by OJJDP reflect the Congressional intent of reduced paperwork, and the changes embodied in the new legislation. State Councils (and eligible recipients) will develop and include in their three year applications a descripton of each program designed to address priority problems. These programs must be consistent with Section 223. These descriptions will include: program objectives, summary of activities planned and services provided, summary budget information, an indication of how the program relates to other similar programs, and a list of performance indicators.

The Three Year Plan

The three year plan is to be based on the State's analysis of juvenile justice and delinquency prevention needs, and juvenile crime problems. The multi-year action plan is for a three-year period, defined as the first year for which the plan is developed (current year) and the two succeeding years. The multi-year action plan is a detailed statement of specific accomplishments expected to achieve progress toward the accomplishment of State goals and objectives. The first year of the multi-year plan is the annual action plan and must be at a level of detail greater than is expected for the subsequent years. For each of the subsequent two years, annual applications (discussed below) will be submitted at the start of those years.

Contents of the Multi-Year Action Plan. The plan must describe the nature and scope of what the State and local governments in the State expect to achieve in the way of improvements in each major problem area over at least the next three years. The problem areas addressed in the multi-year action plan must include at least all those identified as high priority problem areas by the State. Specifically, the comprehensive multi-year action plan must contain the following:

(1) A certification of compliance with the requirements of the Act and other Federal laws.

(2) An analysis of juvenile crime problems and juvenile justice and delinquency prevention needs. (Section 223(a)(8)(A) and (B))

(3) A demonstration that an adequate share of funds are used for advanced techniques. (Section 223 (a)(10))

(4) A description showing that the SAG meets all membership requirements. (Section 223(a)(3))

(5) Documentation that funds used for Planning/Administration, SAG support, and funds passed through to local agencies are consistent with the Act. (Section 223(a)(5))

(6) A plan responding to the requirements of Section 223(a)(12), (13), (14), and (15).

(7) A plan for the concentration of state efforts which coordinates all State Juvenile Justice and Delinquency Prevention Programs. (Section 223(a)(8)(C))

(8) A description of technical assistance needs and priorities.

(9) Descriptions of all programs of the plan.

Annual Update

Annual plan amendments will be required only if new programs are added, existing programs modified, or if programs originally proposed are not implemented. No award of funds can be made with respect to a program other than to a program contained in an approved application. In addition, annual certifications will be required on plan items (1)-(9) as set forth above. Certifications will preclude the necessity of reporting annually on progress on the above-referenced sections in the Annual Performance Report required by Section 223(a).

II. Current Practice

Prior to the 1980 amendments to the Juvenile Justice Act, states participating in the formula grant program were required by OJJDP to submit an annual plan. While much detail was repeated or modified only slightly, each annual document was separate and distinct, with no continuity or relationship with prior plan submissions required to be demonstrated.

III. Issues:

Three Year Plan

1. Will OJJDP make a grant to a state for one or three years?

   OJJDP will approve a Plan for three years but will require an annual application for funds.

2. Will an annual Action Plan be required for each year?

   No, in the second and third year after the submission of the three-year plan, only an application with any amendments and an annual performance report will be required.

3. Will States be required to certify for each year of the three year plan that no changes have occurred concerning the requirements of Section 223(a)?

   Yes, a set of certified assurances will be required for each application.

4. Will States be able to transfer funds from one program area to another during the year, and will it require OJJDP approval?

   Yes, in accord with the recently published Financial and Administrative Guide for Grants (OJARS M 7100.1B).

5. Will States be required to pass through planning and administration monies to local units of government if either:

   (a) There are no local or regional juvenile justice planning units; or
   (b) All planning is done on the State level?

   No

6. What will be the waiver provisions for pass through of administrative funds and action funds?

   The Financial Guide has the waiver provisions for action funds. There is no waiver for administrative funds but States could find, in appro circumstances, that it is equitable not to pass through planning and administrative funds.

7. Must priorities still be reviewed within 45 days by State legislatu according to Section 403(b) of JSIA?

   No, legislative review of the JJDP Act Plan is not required by Fede law.

Annual Update

1. Will a State be able to revise parts of the Three Year Plan not related to the annual action application?

   States may revise parts of the Three Year Plan. Revisions must include the appropriate justifications or explanation of changes.

2. Will OJJDP provide an application update kit for the 2nd and 3rd years of the of the Three Year Plan?

   OJJDP will provide application kits and assistance to the States for each FY of the Three Year Plan.

3. Will the base document (initial plan) serve as the basis for the 2nd and 3rd year applications?

   Yes, any activity not consistent with the original Three Year Plan, or revisions of same, will not be eligible for funding.

4. Will updates to the Juvenile Crime Problem and Juvenile Delinquency Prevention Needs section be required on an annual basis?

   When additional information becomes available which is germane to the existing Program Priorities of the Three Year Plan, or when such additional information supports a new Program in the Three Year Plan, the State is required to update the Juvenile Crime Problem and Juvenile Delinquency Prevention Needs section of the Three Year Plan.

IV. Possible Language for Regulations

Pursuant to Section 223(a) of the JJDP Act, in order to receive formula grants a State must submit a plan applicable to a three year period. In addition to the requirements as specified in Sections 223(a)(1) through (22), the applications shall include descriptions of programs to be supported with formula grant funds over a three-year period. Each description shall include:

(i) The title of the program.

(ii) A statement of the program's objective.

(iii) A list of performance indicators by which progress toward achievement of program objectives will be measured. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should be related to the measures used in the problem statement and statement of program objectives.

(iv) A summary of activities planned and services to be provided under the program.

(v) A breakdown of the total program budget to include formula grant funds and any other Federal, State, local, or other funds to be associated with the program.

(vi) A description of the relationship of the program to other similar Federal, State or locally sponsored programs or projects operating in the jurisdiction or jurisdictions to be affected by activities funded under the program.

(vii) Technical assistance needs to implement the program.

Annual Update

OJJDP will require that States provide an annual assurance to indicate compliance with the following requirements under Section 223(a) of the Act:

1. Plan supervision, administration and implementation
2. Consultation with and participation of units of general local government
3. Participation of private agencies
4. Right of privacy for recipients of services
5. Equitable arrangements for employees affected by assistance
6. Equitable distribution of funds and assistance to disadvantaged youth
7. Analytical and training capacity

In addition, the State CJC will be required to identify amounts of funds used for planning and administration and those passed through to units of general local government. The State must also specify the amount and percentage of action funds to be passed through to units of general local government and to local private agencies. The specific amount of funds programmed for the advanced technique emphasis must also be reported.

In addition, the State must assure and certify compliance with other applicable terms and conditions of the JSIA and applicable Federal laws as enumerated in 28 C.F.R. Part 31.

ANNUAL PERFORMANCE REPORT

I. Evaluation of the Amendment

Section 223(a) of the Juvenile Justice Amendments of 1980 requires that as part of its annual plan submission each State submit an annual performance report. This report "...shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements."

This amendment relates to the three year planning cycle established by the Amendments. The State's progress in the implementation of programs, as reported at the end of years 1, 2, and 3, should form the basis for amendments to the initial plan after years 1 and 2 and for the new three year plan submitted at the end of year 3. Similarly, the report on the status of State compliance with State plan requirements may be used by a State as a basis for modification of programs, for corrective actions, and for providing needed monitoring information to OJJDP.

OJJDP plans to require that States use their established performance indicators as the basis for evaluating the State's progress in program implementation, in essence combining the new Section 223(a) performance report and the existing Section 223(a)(20) requirement.

II. Current Practice

Although Section 223(a)(20) has required, and continues to require, an annual State submission which analyzes and evaluates the effectiveness of programs and activities carried out under the plan, coupled with necessary plan modifications, OJJDP has not established a regulation that formally establishes procedures for such a submission. However, OJJDP regulations for submission of the FY 1981 plan required that each State develop performance indicators for programs funded under the plan (45 F.R. § 31.703(h)(2)(iii)). Performance indicators, as developed and set forth for each program: (1) show what data will be collected at the program level to measure whether objectives and performance goals have been achieved; and (2) should be related to the measures used in the problem statement and statement of program objectives.

The CJC is currently required to submit a monitoring report by December 31 of each year which shows progress toward deinstitutionalization of status and non-offenders and progress toward separation of juveniles and adults in institutions. It is anticipated that only a narrative summary of progress toward meeting these requirements (and the new jail removal mandate) would be required in the report on status of compliance with plan requirements.

III. ISSUES

formance report be due?

eport will be submitted with the annual
due 8/31/82.

2. What time frame must be considered in reporting annually on the progress of program implementation as defined in the original plan?

   The first annual performance report will be submitted with the FY 1983 annual action plan in August of 1982. Each annual performance report thereafter must provide information on progress in the implementation of programs identified and funded under that three year plan.

3. How do States accomplish local participation in planning without funds?

   If a local planning network no longer exists, other options for gathering local input will have to be explored.

IV. Possible Language for Regulations

The Annual Performance Report will be submitted with the Annual application, commencing in August of 1982. This report shall address the following:

Progress in Program Implementation. The State shall report on its progress in the implementation of programs, as described in the three year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measureable goals.

Compliance with State Plan Requirements. The State shall also describe the status of compliance with each of the following requirements. Compliance is to be measured against the assurances made in the three year plan and any subsequent modifications.

(1) Funding.

Indicate the amount of funds that have been awarded, the programs they have been applied to, the percentage used for advanced techniques, and the percentage passed through to units of local government.

Describe how funds have been equitably distributed within the State.

Describe how funds have been equitably distributed to deal with disadvantaged youth, as required by Section 223 (a)(16), specifying the number of disadvantaged youth who participated in programs supported with formula funds.

(2) State Concentration/Coordination of Effort.

Describe the State's progress in implementation of coordination of its plan for all juvenile delinquency programs within the State.

(3) Consultation.

Describe how units of general local government and private agencies have been involved in the development and implementation of the State plan.

(4) Development of Research, Training and Evaluation Capacity.

Describe efforts to develop an adequate research, training and evaluation capacity within the State.

(5) Briefly describe the State's progress in implementing its plan for compliance with Section 223(a)(12)-(14), as outlined in the multi-year plan for achieving compliance with these requirements.

DESIGNATION OF STATE AGENCY TO ADMINISTER FORMULA GRANT PROGRAM

I. Evaluation of the Amendment

Section 223(a)(1) of the Juvenile Justice Act is amended to provide that State criminal justice councils, established as successors to State planning agencies under Section 402(b)(1) of the Crime Control Act, as amended by the Justice System Improvement Act of 1979, would continue to have the basic responsibility for supervising the preparation and administration of each State's Juvenile Justice Act plan. Such agency must also have the authority to implement the plan (Section 223)(a)(2)).

A new subsection (c) was also added to Section 261 of the Act. This amendment provides specific authority for the establishment of alternative State level administrative structures to carry out the formula grant program.

> (c) Notwithstanding any other provision of law, if the Administrator determines, in his discretion, that sufficient funds have not been appropriated for any fiscal year for the activities authorized in part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968, then the Administrator is authorized to—
>
> > (1) approve any appropriate State agency designated by the Governor of the State involved as the sole agency responsible for supervising the preparation and administration of the State plan submitted under section 223; and
> >
> > (2) establish appropriate administrative and supervisory board membership requirements for any agency designated in accordance with paragraph (1), and permit the State advisory group appointed under section 223(a)(3) to operate as the supervisory board for such agency, at the discretion of the Governor.

This amendment was offered by Representative Andrews, during House floor consideration of H.R. 6704, in anticipation that a lack of appropriations for LEAA's Crime Control Act formula grant program (Part D) could result in the phasing out of the operations of criminal justice councils in certain States. The intent of the amendment, Representative Andrews stated from the floor of the House, was to "grant governors needed flexibility in the event LEAA should be phased-out".

II. Current Practice

With few exceptions (e.g., West Virginia), the State planning agencies have directly provided core planning and administration needs with staff resources. However, the cutbacks in Crime Control Act planning and administration funds threaten to seriously and adversely affect the Juvenile Justice Act program. This is due to the fact that many core services, such as fiscal and audit, are supported by Crime Control Act dollars. At a minimum, the continuation of this situation will result in major organizational changes in most of these agencies.

The complete absence of new program dollars under Part D of the Crime Control Act for fiscal year 1981 also poses problems for the Juvenile Justice Act program. Maintenance of effort dollars are lost. Further, the existing CJC supervisory boards, with major representation of criminal justice system and governmental elements that may not view juvenile justice as a priority, may not function as effectively.

Many State councils are in the process of reassessing their structure and future juvenile justice roles. Both Federal level developments and State political decisions can be expected to significantly impact the future of the juvenile justice program and its location in each State. What Section 261(c) does is to recognize the need for State flexibility while giving the OJJDP Administrator the ability to insure that each State can effectively implement the program.

Section 223(a)(3) of the Juvenile Justice and Delinquency Prevention Act provides for the establishment of a State juvenile justice advisory group and prescribes the composition, duties, and responsibilities of that body. Currently, State advisory groups function in an advisory capacity to the governor, the State legislature, and the criminal justice council and its supervisory board on matters related to juvenile justice and delinquency prevention including the allocation of Juvenile Justice and Crime Control Act formula funds directed to juvenile justice programs and projects. In practice, all activities of the State advisory group are carried out under the umbrella and administrative oversight of the criminal justice council and its supervisory board. Final action on the allocation of funds to juvenile justice activities is vested in the criminal justice council supervisory board even where the action by the criminal justice council or its supervisory board is, in practice, a pro forma affirmation of the recommendations of the State advisory group.

III. Issues

1. On what factors will the OJJDP Administrator base a determination that an appropriation to the Omnibus Crime Control and Safe Streets Act is insufficient to support activities authorized under Part D of that Act?

   As no funds in the Fiscal Year 1981 appropriation to the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Justice System Improvement Act of 1979, are to be directed to Part D of that Act, it can reasonably be concluded that current appropriations to that Act are insufficient to support activities authorized under Part D of the Act. Part D authorizes the establishment and use of Part D funds to support State criminal justice councils, local criminal justice advisory boards, and judicial coordinating committees and the award of funds to State, regional, and local, public and private-sector sponsored criminal justice programs and projects. Should the situation change, and an appropriation to Part D be authorized, the sufficiency of Part D funds to support authorized activities in the States would be determined based on the amount of that appropriation and its sufficiency to support Part D activities in the States. This latter determination would be made for each State on a case-by-case basis.

2. On what criteria will the OJJDP Administrator base a decision to approve or disapprove a governor's designation of an "appropriate" agency other than the criminal justice council to administer the juvenile justice formula grant program? e.g., will operating agencies be allowed to be designated?

   An "appropriate" State agency is any agency the governor of a State chooses to designate to administer the Juvenile Justice Act which has the capability to carry out mandated statutory responsibilities. In approving or disapproving a governor's designation, the OJJDP Administrator will necessarily consider, on a case-by-case basis, the capacity of the designated agency to administer the juvenile justice program: to develop the juvenile justice plan; to process grant applications submitted under the juvenile justice plan; to administer grants awarded under the juvenile justice plan; to monitor and evaluate programs and projects; to provide necessary administrative/support services; and to perform such accountability functions as are necessary for the administration of Federal funds generally, such as close-out of grants and audit of funds.

3. Can the OJJDP Administrator intervene in a State to cause the governor to designate an agency other than the criminal justice council to administer the juvenile justice formula grant program?

   No.

4. Is State legislative action required to transfer the administration of the juvenile justice formula grant program to an agency other than the criminal justice council where administration of that program is currently a legislatively established responsibility of the criminal justice council?

   Generally, yes, except where the governor is authorized by other State statute to alter the structure of the Executive Branch by administrative means.

5. If an agency other than the criminal justice council is designated to administer the juvenile justice formula grant program, can the State juvenile justice advisory group be designated, by the governor, the supervisory board of that agency? Must its membership composition be altered from that prescribed in Section 223(a)(3)(A), (B), (C), (D) and (E) of the Juvenile Justice and Delinquency Prevention Act?

   Yes, the State advisory group may be designated the supervisory board by the governor. No change would be required in the advisory group's membership. However, action would have to be taken by the OJJDP Administrator pursuant to Section 261(c)(1) to approve the governor's designation.

6. What other minimum requirements for supervisory board membership will be established by the Administrator?

If the governor transferred administration of the formula grant programs to another agency, leaving the State advisory group as an advisory group and creating a new supervisory board which would retain the authority to act on grants, etc., the composition of the new supervisory board would be reviewed by the OJJDP Administrator to determine whether a "balanced representation" of juvenile justice interests were provided.

7. What are "administrative requirements" referred to in Section 261(c)(2)?

   Principally, the authority to take action on the award of formula funds.

8. Can a governor designate an agency which is a large current or potential recipient of Juvenile Justice Act funds? Does a conflict of interest exist? What if the programmatic interest is contrary to the Act's goals?

   The "agency" merely provides staff services for the board. It is the supervisory board which has policymaking authority, including determinations of proper allocations and grant approval. This should prevent an operating agency receiving more than its proper share of funds. If a staff agency were to be in a position of dictating fund allocations, OJJDP might find that a conflict of interest exists. If a governor wished to designate an agency whose programmatic interests were inconsistent with or irrelevant to the goals and objectives of the Act, the Administrator would not find such designation to be appropriate.

9. Can the Administrator approve a different State advisory group in terms of size and composition if the governor shifts the program to another agency?

   No, the size and composition of the SAG are governed by statutory constraints which the Administrator has no authority to waive.

10. Would it be possible to amend the makeup of the supervisory board and allow it to also serve as the advisory board?

    Yes, but it would have to meet the representation requirements for the State advisory group.

11. If a SAG is designated as the supervisory board and later a State's inactive Crime Control Act supervisory board is reestablished, would the old supervisory board have to reassume authority over the advisory board?

    No, but the governor could take such a course of action.

IV. Possible Language for Regulations

A State which wishes to transfer administration of the formula grant program from the CJC to another agency must submit a request in writing to the OJJDP Administrator which documents the intent of the governor to designate an agency other than the CJC to administer the program. This request should be submitted to OJJDP prior to designation.

STATE ADVISORY GROUPS

I. Evaluation of the Amendment

State advisory group membership requirements and responsibilities under the Juvenile Justice Amendments of 1980 are broadened. These changes reflect Congress' effort to strengthen State advisory groups.

Existing requirements were adjusted by the Amendments in the following way:

1. The size of the State advisory group is changed from "Not less than 21 members" to "not less than 15 members." The maximum size remains at 33.

2. Locally elected officials must now be included in the membership.

3. Public agencies concerned with delinquency prevention and treatment are defined to specifically include those concerned with special education.

4. Mandatory youth membership is modified from one-third to one-fifth of the total membership and the maximum age at the time of appointment is lowered from 26 years to 24 years of age.

5. The requirement that at least three members of the advisory group shall have been or shall be under the jurisdiction of the juvenile justice system is continued.

6. The advisory group must contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system; and

7. The advisory group is now required to make annual recommendations to the governor and the legislature. This authority was previously permissive.

Congress was particularly concerned that the State advisory groups be actively involved in acquiring continuing perspectives from "consumers" within the juvenile justice system. Changes noted above should assist in that endeavor. Many of the changes parallel the reorganization of the National Advisory Committee.

II. Current Practice

The requirement for a State advisory group for juvenile justice and delinquency prevention was established in the original JJDP Act of 1974 and subsequently refined in the Amendments to the Act in 1977. The creation of these advisory groups, appointed by the governor, is viewed as an effort to insure that those who are most knowledgeable in the area of juvenile justice will have a direct role in the planning and program implementation process at the State level.

III. Issues

1. When must State advisory groups be in compliance with the changes in membership requirements?

States should begin adjusting the membership immediately so that the SAG's will meet all membership requirements at the time the FY 1982 applications are due. However, if State law establishes SAG membership requirements which will require amendment before a State can comply, OJJDP will permit such a State a reasonable time, as requested in the State plan, to come into compliance.

2. When must the first SAG annual report for the governor and State legislature be completed and submitted?

   The first such report should be submitted during calendar year 1981.

3. Must State formula grant applications include the names of members of the SAG that have been or are currently under the jurisdiction of the juvenile justice system?

   The applications to OJJDP need only provide a certified assurance that the membership reflects this requirement. No identification of specific members meeting this requirement has ever been required.

4. How must State applications address the requirement that the SAG seek regular input from juveniles currently under the jurisdiction of the juvenile justice system?

   The application need only indicate what methods will be employed to acquire the perspectives from "consumers" within the juvenile justice system. The methods to acquire such information are numerous. OJJDP will not require that any specific method be used.

5. What is a "locally elected official" and will there be a minimum number of locally elected officials required for each State advisory group?

   Locally elected officials are defined as persons elected to public office for a local unit of government under a general or specific plebiscite. At least one locally elected official must be a member of the SAG. For larger boards, two or more locally elected officials would be appropriate. Balanced representation of interests and expertise is required.

6. May one member of a SAG meet more than one of the membership requirements specified in Section 223(a)(3)?

   Yes. However, the requirements of Section 223(a)(3)(D) and (E) must be observed.

7. Do "locally elected officials" include State Senators and Representatives?

   No, because they do not serve at the local level.

8. Is it an absolute requirement that at least three members of the advisory group must be or have been under the jurisdiction of the juvenile justice system?

Yes, statutory requirements cannot be waived in the absence of specific authority to waive them.

9. What happened to the statutory requirement that the chairman and two members of the SAG be on the supervisory board?

   This requirement is established by regulation (31 C.F.R. §101(a)(1)) which is based on the authority of Section 1301(i) of the Justice System Improvement Act of 1979.

10. Could the SAG serve the role of coordination and concentration of State effort if all appropriate agencies are represented?

    Yes.

11. Section 223(a)(3)(E)--Does this section mean that three of those members under 24 shall have been or shall currently be under the jurisdiction of the juvenile justice system or three members of the entire SAG?

    Three members of the <u>entire</u> SAG.

12. Section 223(a)(3)(E)--Does this section refer to input from SAG members currently under the system or does it require arranging for input from juveniles in institutions, group homes, on probation, etc.?

    The latter. How this input will be obtained will be up to individual advisory groups.

13. What would be the basis for termination of a SAG for a State that has lost eligibility for participation?

    As long as there are unobligated or unexpended funds, the State is still responsible for the expenditure of funds in accordance with the Act. The SAG must review all applications for funds. Therefore, the State should still maintain its SAG.

14. Will OJJDP permit youth members appointed prior to the 1980 Amendments who were under age 26 at the time of appointment to still be considered youth members even though the maximum age for a youth member at the time of appointment has been lowered to under age 24?

    A youth member appointed under the prior legislation who was under age 24 at the time of initial appointment would still be considered a youth member. An individual age 24 or 25 at the time of initial appointment under the prior legislation would lose the status of a youth member.

15. Can the State criminal justice council supervisory board delegate its grant approval authority for juvenile justice projects to the SAG?

    Yes, such authority may be "delegated" to but not "vested" in the SAG unless the SAG has been designated and approved as the supervisory board.

IV. Possible Language for Regulations

The Chief Executive shall establish a Juvenile Justice Advisory Group pursuant to section 223(a)(3) of the JJDP Act. State Councils shall, as part of their annual juvenile justice plan:

(1) Provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in Section 223(a)(3) of the Act. Indicate those members initially appointed prior to their 24th birthday as youth members. Full-time elected officials are considered to be government employees and may not be appointed to chair advisory groups.

(2) Assure that three members who have been or are currently under the jurisdiction of the juvenile justice system have been appointed to the advisory group.

(3) Indicate the roles, responsibilities and activities of the advisory group with respect to those duties listed in section 223(a)(3) of the Act.

(4) Provide the SAG plan for the use of the 5% allocation of funds pursuant to Section 222(c).

JUVENILE CRIME ANALYSIS

I. Evaluation of Amendment

State plan requirements have been revised to bring juvenile justice and delinquency prevention plan requirements into conformance with the criminal justice plan requirements under the Justice System Improvement Act.

The Juvenile Justice Amendments of 1980 amend Section 223(a)(8) to establish a new structure and framework for the formulation of programs to be funded under the State plan. Section 223(a)(8) provides, in pertinent part, that the State plan shall:

> (8) provide for (A) an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs within the relevant jurisdiction, a description of the services to be provided, and a description of performance goals and priorities, including a specific statement of the manner in which programs are expected to meet the identified juvenile crime problems and juvenile justice and delinquency prevention needs of the jurisdiction; (B) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and. . .

In consideration of these requirements, OJJDP plans to require that each State's subparagraph (A) analysis be based upon the means and resources available to each State at the time the FY 1982 JJDP Plan is being formulated. This policy regarding the analysis section of the Plan is intended to:

(1) be in conformance with the Congressional mandate to reduce paperwork; and

(2) allow States as much flexibility in portraying an analysis of its juvenile crime problems and juvenile justice and delinquency prevention needs as possible.

II. Current Practice

The FY 1981 JJDP formula grant awards were made based upon a certified assurance by each participating State that a detailed study of the juvenile justice system problems and needs had been conducted.

This assurance was one of the twenty-one made as a result of the implementation of a checklist which had first been utilized under the Crime Control Act block grant program in FY 1980. The OJJDP developed a formula grant checklist for use in FY 1981 for the first time.

III. Issues

1. What minimum elements will be required in the Juvenile Justice Crime Analysis section of the FY 1982 Plan?

See possible regulations.

2. Must the entirety of a State's juvenile crime problem be reflected in the FY 1982 plan?

   Juvenile crime problems and JJDP needs vary within each State. The State must, in developing its juvenile justice plan, address the entirety of the State's juvenile crime problem. However, a State may choose to focus attention on those specific problems and needs it has identified and intends to respond to through programs and projects funded under the plan.

3. What data sources must be utilized by the CJC in developing the Crime Analysis Section of the FY 1982 Plan?

   The most current data sources must be utilized in performing the crime analysis, and identified in the Plan submission to OJJDP. Examples of sources which should be utilized include the State's latest Uniform Crime Report, State Legislative Committee Reports, recent research studies undertaken, national model publications, specific reports by juvenile justice agencies, monitoring reports, etc.

4. Will updates of "Crime Analysis" and "Needs" sections be required on an annual basis?

   An update will be required when:
   (a) New programs are added which do not reflect the analysis in the original Plan; or
   (b) Such additional information is germane to programs in the original, approved application.

5. Could any funds be provided to a nonparticipating State to allow development of a three-year plan leading toward participation?

   Yes.

6. How does the analysis now required by Section 223(a)(8) differ from the former detailed study of needs?

   Very little in terms of the existing plan development process.

7. What will OJJDP do with the crime analysis data submitted by the CJC?

   The data will be reviewed to determine whether it reasonably supports the program priorities established by the State plan.

8. Assuming the term "juvenile justice system" does not include criminal courts, does this mean the crime analysis should not consider juveniles waived to or under the jurisdiction of the criminal justice system?

   No, the crime analysis (and the plan, if necessary) should address the needs of juveniles in the criminal justice system.

IV. Possible Language for Regulations

Pursuant to Section 223(a)(8)(A) and (B) of the JJDP Act, the State Council shall conduct a detailed study of the juvenile justice system. The results shall be a series of problem statements that reflect an analysis of the data, the monitoring reports and requirements of the JJDP Act and that provide the basis for developing the juvenile justice system programs. This study should include:

(1) A description of the structure and functions of units of the juvenile justice system and a description of the flow of youths through the system, on an annual basis. The descriptive flow shall include a summary of the number and characteristics (age, sex, national origin, and race) of youths within the State, and a summary of the number and characteristics (offense, age, sex, national origin, and race) of youths handled (including arrests and petitions, by each unit of the juvenile justice system) and disposition made by each (including the number and characteristics of juveniles within each dispositional category).

(2) An analysis of the nature of the delinquency problem within the State. This analysis should include unemployment rates, school dropout, suspension and expulsion rates, and other conditions considered or determined by the State to be relevant to delinquency prevention programming.

(3) A description of major programs operated outside of the formal juvenile justice system which are designed to impact directly on delinquency reduction, control, or prevention. The description should include the structure, objectives, number and descriptions of youths served, program costs, and sources of funds.

COORDINATION AND CONCENTRATION OF STATE EFFORT

I. Evaluation of the Amendment

A new subparagraph (C) is added to Section 223(a)(8) of the Act. This subparagraph requires that States receiving formula grant funds develop:

> (C) a plan for the concentration of State efforts which shall coordinate all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, including provision for regular meetings of State officials with responsibility in the area of juvenile justice and delinquency prevention.

This requirement parallels the Federal concentration of effort provision of the Act. It is designed to establish a comprehensive and statewide juvenile justice program coordination effort. It recognizes that juvenile delinquency does not have a single cause, and no single solution. Rather, it has been demonstrated that in order to prevent and treat delinquency, economic, social, educational and justice resources are required. Solutions are inherently multi-disciplinary and, therefore, inherently multi-agency in nature.

Because of the multiple dimensions of the youth problem, responses to the problem at both the Federal and State level have evolved disparately over the years. The development of different Federal programs to address particular facets of the overall problem have led to a multitude of different State and Federal agencies responding to the problem. Each program brings with it its own regulations, funding procedures, eligibility requirements, and application and certification forms. As a whole, the programs encourage widely diverse and sometimes conflicting solutions to similar problems.

This section of the Act is important because it could lead to improved efficiency and delivery of services, less duplication of services, and improved management. In an era of declining fund availability, the ability to establish uniform objectives and priorities for all State juvenile delinquency programs is essential if services are to be maintained at current levels.

II. Current Practice

The CJC is required to provide for the coordination and maximum utilization of existing juvenile delinquency programs and other related programs such as education, health, and welfare within the State. This provision has not been specifically addressed in previous plans.

III. Issues

1. Will OJJDP guidelines require the designation of a lead agency or office?

The lead agency can be any agency appointed by the governor. It does not necessarily have to be the CJC. The agency appointed as lead should have authority to implement all plan requirements, i.e., call meetings, establish objectives, etc.

2. Should certain agencies be required to participate in meetings called pursuant to this amendment?

   Although OJJDP will not require specific agencies to participate in meetings, we will encourage that all State agencies with responsibility for juvenile justice programs or that provide support for juvenile justice programs be included in all meetings.

3. Can funds other than Planning and Administration funds be utilized to provide any needed staff support for this activity?

   No, however, the CJC can decide to utilize additional State funds to support this activity.

4. What are "regular meetings"?

   Meetings should be held at least quarterly.

5. Will there be a planning period or does a CJC have to implement this section immediately?

   The plan for implementation of this requirement must be completed and submitted with the initial Three Year plan. Progress in implementing the plan must be reported in subsequent Annual Performance Reports.

6. Will the Federal Coordinating Council members pledge the support of their State level agencies to the coordination of State efforts?

   This is an issue that would have to be considered and determined by the Council.

7. How does OJJDP propose that the States go about coordinating all State juvenile justice and delinquency prevention programs?

   It is up to the State.

8. Given the directive to coordinate delinquency programs in the State, what plans are there to inform CJC's of discretionary funded programs operating in their respective States (those funded by and monitored directly by OJJDP)?

   CJC's are notified by OJJDP of all discretionary funded projects in the State.

IV. Possible Language for Regulations

Pursuant to Section 223(a)(8)(C) the State Council shall submit a plan for the concentration of State efforts as they relate to the coordination of all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities.

Progress achieved in meeting the above requirement will be reported in the Annual Performance Report.

I. Evaluation of the Amendment

The Section 223(a)(12)(A) deinstitutionalization mandate of the Juvenile Justice and Delinquency Prevention Act was modified to permit the confinement, in secure juvenile detention and correctional facilities, of a juvenile who has violated a valid court order. Section 223(a)(12)(A), as amended by the Juvenile Justice Amendments of 1980, reads as follows:

> "12(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities..." (Relevant new language underlined.)

This amendment was first offered in the Subcommittee on Human Resources of the House Education and Labor Committee by Representative Coleman. The amendment was accepted by the Subcommittee but later rejected by the full Committee on a vote of 23 to 9. Supplemental Views on this issue are set forth in the House Committee Report on the Amendments, H.R. No. 96-946, May 13, 1980, at pages 76-77. This amendment was subsequently offered during House floor consideration of H.R. 6704 by Representative Ashbrook. The amendment was accepted by the full House on a vote of 239 to 123.

In debate on the floor of the House, Representative Ashbrook explained that the intent of his amendment was to return to the juvenile court "its traditional discretionary power to enforce valid court orders" and "to enable juvenile courts to place status and nonoffenders in secure detention and correctional facilities if they are found to be in violation of a valid court order." (126 Cong. Rec. H 10932-10938, November 19, 1980). Representative Ashbrook said the amendment would return to the courts their flexibility "to respond to youth who chronically refuse voluntary treatment" but would at the same time "assure the continued protection of the basic rights of these youths". He explained the procedure as follows:

> "First, the respective court must issue a 'valid order'. This means that any such order must, first, be given [by] a court of competent jurisdiction; second, involve a judiciable controversy where the legal rights of the parties need to be resolved by the court; third, that the court must enter a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures; and fourth, where the court has the statutory power to act.
>
> These rights are further protected [at the hearing on the violation of a valid court order] by the requirement that these youth receive their due process rights, which were specifically enumerated by the Supreme Court in re Gault as follows:

(i) the right to have the charges against the juvenile in writing, served upon him a reasonable time before the hearing;

(ii) the right to a hearing before a court;

(iii) the right to an explanation of the nature and consequences of the proceedings;

(iv) the right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(v) the right to confront witnesses;

(vi) the right to present witnesses;

(vii) the right to have a transcript or record of the proceedings; and

(viii) the right of appeal to an appropriate court." (Cong. Rec., supra, at H 10932)

In an exchange with Representative Miller, who spoke in opposition to the amendment, Representative Ashbrook indicated that his amendment would allow violations of a valid court order to be treated by the juvenile court with a contempt citation, thus permitting the court to respond to such a violation in the context of a civil proceeding. (Cong. Rec., supra, at H 10936) To fail to act affirmatively on his amendment, Representative Ashbrook stated, "would be to augment the growing trend to make violations of court orders a criminal offense and thus subject the youth immediately to incarceration." (Cong. Rec., supra, at H 10932)

II. Current Practice

As a condition precedent to receipt of Federal assistance under the juvenile justice formula grant program, States must submit a plan which, pursuant to Section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, will eliminate the practice of confining status offenders and non-offenders such as dependent and neglected youth in juvenile detention or correctional facilities. Prior to passage of the Juvenile Justice Amendments of 1980, there was no exception to the prohibition on the secure confinement of status and nonoffenders who violate valid court orders, whether such violation was civil or criminal in nature.

III. Issues

1. If State legislation currently prohibits the secure confinement of status and nonoffenders who violate a valid court order, would legislative change be required if a State wanted to have the authority to confine status offenders who violate such orders?

   Yes, States which have legislation prohibiting the secure placement of status offenders who violate valid court orders are not authorized by the JJDP Act to place such youth in secure confinement. The more restrictive State legislation would take precedence over the latitude allowed by the amendment to Section 223(a)(12)((A) of the JJDP Act.

2. May a status offender who is confined as a consequence of a violation of a valid court order be confined with juveniles alleged to be or adjudicated delinquent? Accused or convicted adult criminal offenders?

   There is no prohibition in the JJDP Act against the commingling of status offenders and juvenile criminal-type offenders, although State legislation may restrict such confinement. However, a status offender who is confined as a consequence of a violation of a valid court order may not be held in regular contact with incarcerated adult persons. Thus, the "separation" requirement of Section 223(a)(13) continues to be applicable to all status offenders, even if they are found to have violated a valid court order.

3. What effect does the valid court order amendment have on the preparation, submission, and OJJDP action on the December 31, 1980 monitoring report?

   None. The first monitoring report which should reflect the extent to which status offenders are placed in secure confinement will be the 1981 report. However, if a State is found ineligible for continued participation because of a failure to achieve full compliance with de minimis exceptions, such State will be allowed to incorporate the "valid court order" issue as an exceptional circumstance in their request for a finding of full compliance with de minimis exceptions.

4. Does a status offender who is adjudicated by the juvenile court for the violation of a valid court order remain a status offender? Does he/she become a delinquent?

   A status offender who violates a valid court order remains a status offender and for the purposes of monitoring is not reclassified as a delinquent or criminal-type offender.

5. What constitutes a valid court order, i.e., what conditions must be present to consider an order as being "valid"?

   In order to be in violation of a valid court order, a juvenile must first have been brought into a court of competent jurisdiction and made subject to a "valid order." Thus, no first time status offender could be incarcerated under this provision. The court order must involve a judiciable controversy where the legal rights of the parties need to be resolved by the court and the court must enter a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedure. The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued. Such warning must be provided to the juvenile in writing or be reflected in the court record and proceedings.

6. What are the full "due process" rights which must be accorded a status offender accused of violating a valid court order? When must these due process rights be accorded the juvenile offender--at the time of issuance of the order or in the proceeding relative to the alleged violation of that order?

   The full "due process" rights are those enumerated in In Re Gault and include:

   (i) the right to have the charges against the juvenile in writing, served upon him a reasonable time before the hearing;
   (ii) the right to a hearing before a court;
   (iii) the right to an explanation of the nature and consequences of the proceedings;
   (iv) the right to legal counsel, and the right to have such counsel appointed by the court if indigent;
   (v) the right to confront witnesses;
   (vi) the right to present witnesses;
   (vii) the right to have a transcript or record of the proceedings; and
   (viii) the right of appeal to an appropriate court.

   The due process rights should be accorded the juvenile at the adjudicatory hearing but must be provided at the violation hearing. The violation hearing must be a judicial proceeding before a court of competent jurisdiction. In entering the order that directs or authorizes disposition of placement in a secure facility, the judge must certify that all the elements of a valid court order and the applicable due process rights were afforded the juvenile and that there is no rational alternative to incarceration of the juvenile.

7. How do the "due process" requirements apply to the predetention hearing detentions of youth who are accused of violating valid court orders (i.e., a youth who runs away from a nonsecure placement)? In our State, detention hearings must be held within 72 hours.

   There can be no detention of a juvenile accused of violating a court order except for the 24 hour grace period permitted under OJJDP monitoring policy.

8. If a status offender is adjudicated and placed on probation and, under State law may be placed in secure detention for a limited period of time for violating his probation order twice, would this constitute a violation of a valid court order?

   Yes, if the other conditions for valid court orders are met.

9. If a juvenile is placed in a "nonsecure shelter facility" as a result of a finding that the juvenile violated a valid court order, must that juvenile go through the process again, if he runs away from the nonsecure facility, prior to his placement in a secure facility?

No, at the time that a judicial determination is made that a juvenile violated a valid court order: (1) a new order could be entered or the old order revised to direct a new or continuing nonsecure placement with the express condition that any new violation of the new or revised order will result in placement in a secure facility; or (2) the juvenile could be committed to the cognizant social service or correctional agency for appropriate placement.

10. Can a referee commit under a valid court order?

    It depends. If a referee in a particular jurisdiction has the authority to assert the court's jurisdiction over a status offender, hold a hearing on the facts, determine the legal rights of the parties in a judiciable controversy, and enter a judgment and/or remedy in accordance with established legal principles, then a referee could, like a judge, be empowered to commit a juvenile under the valid court order amendment.

11. One of the Gault rights is to have a transcript or record of the proceedings. If a State provides a hearing on the violation of a valid court order, without a transcript, but with the right to appeal and receive a trial de novo, must a transcript still be required in order to satisfy the juvenile's due process rights?

    No.

12. Would the lawful order of a juvenile court, entered after a preliminary hearing for a juvenile alleged to be a status offender, constitute a "valid court order," subjecting the juvenile to secure placement for a violation of that order during the period of time it is in force?

    Yes.

13. Will OJJDP require that the valid court order exception be used sparingly?

    No, limitations are set by the constraints established in the implementing regulations. If monitoring reports indicate a pattern or practice of abuse, the guidelines could be modified or the situation reported to the Congress for possible legislative action.

14. If a court order places an adjudicated status offender into the custody of the Department of Social Services or Corrections for appropriate placement, the juvenile is placed in shelter care and subsequently runs away, can the agency or the court find that the juvenile has violated a valid court order?

    No.

IV. Possible Language for Regulations

Deinstitutionalization of Status Offenders and Nonoffenders

Pursuant to Section 223(a)(12)(A) of the JJDP Act, the State Council shall:

(1) Describe in detail its specific plan, procedure, and timetable for assuring that:

(a) juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult;

(b) such nonoffenders as dependent or neglected children;

shall not be placed in secure detention or secure correctional facilities. Juveniles who have committed offenses which constitute a violation of a valid court order may be excluded from this requirement.

(2) Describe the financial, legislative, judicial and administrative barriers the State faces in achieving full compliance with the provisions of this paragraph. All accounts shall include a description of the technical assistance needed to overcome these barriers. These barriers should be keyed to the plan noted in paragraph (1) of this section.

(3) For those States that have achieved "substantial compliance" as outlined in Section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance. Attach appropriate documentation.

(4) Submit the report required under Section 223(a)(12)(B) of the Act as part of the annual monitoring report required by Section 223(a)(15) of the Act.

REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS

I. Evaluation of the Amendment

A new Section 223(a)(14) was added by the Amendments to require that the State Plan:

> "Provide that, beginning after the 5-year period following the date of the enactment of the Juvenile Justice Amendments of 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which (A) recognize the special needs of areas characterized by low population density with respect to the detention of juveniles; and (B) shall permit the temporary detention in such adult facilities of juveniles accused of serious crimes against persons, subject to the provisions of paragraph (13), where no existing acceptable alternative placement is available;"

A new paragraph is also added to Section 223(c) to provide that:

> "Failure to achieve compliance with the requirements of subsection (a)(14) within the 5-year time limitation shall terminate any state's eligibility for funding under this subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the state has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed two additional years."

Further, Section 17(a) of the Juvenile Justice Amendments of 1980 requires that a report be prepared regarding the Confinement of Juveniles in Jails for Adults:

> "Sec. 17(a) The Administrator of the Office of Juvenile Justice and Delinquency Prevention, not later than 18 months after the date of the enactment of this Act, shall submit a report to the Congress relating to the cost and implications of any requirement added to the Juvenile Justice and Delinquency Prevention Act of 1974 which would mandate the removal of juveniles from adults in all jails and lockups.
>
> (b) The report required in subsection (a) shall include —
>
> (1) an estimate of the costs likely to be incurred by the states in implementing the requirement specified in subsection (a);
>
> (2) an analysis of the experience of States which currently require the removal of juveniles from adults in all jails and lockups;

(3) an analysis of possible adverse ramifications which may result from such requirement of removal, including an analysis of whether such requirement would lead to an expansion of the residential capacity of secure detention facilities and secure correctional facilities for juveniles, thus resulting in a net increase in the total number of juveniles detained or confined in such facilities; and

(4) recommendations for such legislative or administrative action as the Administrator considers appropriate." 1/

The jail removal amendment was first proposed during a hearing held March 19, 1980, before the Subcommittee on Human Resources of the House Education and Labor Committee concerning reauthorization of the Juvenile Justice Act. At the hearing, Deputy Attorney General Renfrew strongly recommended that Congress amend the Juvenile Justice Act to prohibit absolutely the confinement of juvenile offenders in jails and lockups which might also be used for the confinement of adult offenders. On May 1, Representative Kogovsek introduced the jail removal amendment in the House Education and Labor Committee. The amendment, which was adopted by voice vote of the Committee, permits the States five years in which to accomplish the removal of juveniles from jails and lockups for adults. States that are in substantial compliance with the requirement at the end of five years are granted up to two additional years to achieve full compliance if the state has made an unequivocal commitment to achieving full compliance.

In its report to the full House on H.R. 6704,2/ the House Education and Labor Committee distinguished adult jails and lockups from other correctional facilities as follows:

"For the purposes of this provision, a jail for adults is defined as a locked facility, administered by state, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year. The new provision is intended to require the removal of juveniles from such facilities. A lockup for adults is similar to a jail for adults except that it is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

1/Section 17(a) of the enrolled bill establishes the above requirement for a report on the confinement of juveniles in adult jails and lockups. The floor amendment adding this provision did not designate a section number in the Act but inserted it immediately after Section 262. It would appear that Section 17(a) was intended to become a new Section 263 of the Act with the current Section 263 being redesignated as Section 264.

2/House Report No. 96-946, May 13, 1980.

> Facilities which are not authorized to or do not in practice hold adults convicted of a crime or awaiting trial on criminal charges are not considered adult jails or lockups. Also, institutions and facilities that are used exclusively for the post-conviction or post-adjudication detention or confinement of offenders who have been convicted of crimes or adjudicated delinquent are not adult jails or lockups." (H. Rept. at p. 25-26).

The Committee further stated that it was its intent that the jail removal amendment "extend to all juveniles who may be subject to the excercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations established by state law". (H. Rept., ibid.).

The Committee noted that it did not intend the amendment "to require the release of any juvenile delinquent offenders from secure detention and correctional facilities. Juveniles alleged to have committed delinquent offenses can still be detained in secure facilities - but not in adult jails or lockups". (H. Rept., ibid.) However, the Committee continued:

> "Juveniles adjudicated delinquent, if confined in an institution that incarcerates adult criminal offenders, would continue to have to be separated from regular contact with adults in order for the state to be in compliance with the Section 223(a)(13) separation requirement." (H. Rept., ibid.)

Neither did the Committee intend that the provision extend to juveniles who have been waived to the criminal court by the juvenile court:

> "If a juvenile is formally waived or transferred to criminal court by a juvenile court and criminal charges have been filed or a criminal court with original or concurrent jurisdiction over a juvenile has formally asserted its jurisdiction through the filing of criminal charges against a juvenile, the Section 223(a)(14) prohibition no longer attaches." (H. Rept., ibid.)

However, the Committee continued:

> "...the new provision is not intended to encourage increased waivers of juveniles to criminal court, a decrease in the age of original or concurrent criminal court jurisdiction, or a lowering of the age of juvenile court jurisdiction for specific categories or classes of offenses committed by juveniles." (H. Rept., ibid.)

In addressing the implementation of the jail removal amendment, the Committee stated it expects a "rule of reason" to be followed:

"For example, it would be permissible for OJJDP to permit temporary holding in an adult jail or lockup by police of juveniles arrested for committing an act which would be a crime if committed by an adult for purposes of identification, processing, and transfer to juvenile court officials or juvenile shelter or detention facilities. Any such holding of juveniles should be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, but in no case overnight. Section 223(a)(13) would prohibit such juveniles who are delinquent offenders from having regular contact with adult offenders during this brief holding period." (H. Rept., ibid.)

From the floor of the House, Representative Coleman offered two amendments to the jail removal amendment as adopted by the House Education and Labor Committee: (1) to direct the OJJDP Administrator to promulgate regulations which recognize the special needs of areas characterized by low population density with respect to the detention of juveniles. These regulations would permit the temporary detention in adult jails and lockups of juveniles accused of serious crimes against persons, where no existing acceptable alternative placement is available in such areas; and (2) to require the OJJDP Administrator to submit to Congress within 18 months of the date of enactment, a report to the Congress relating to the cost and implication of the new jail removal requirement. The report will detail cost to the States, the experience of States currently requiring removal of juveniles from jails and lockups, and possible recommendations for legislative or administrative action.

Regarding the general intent of his amendments, Representative Coleman stated:

"Although this new provision represents a major advance in the compassionate and effective handling of incarcerated youth, many states are afraid that the cost of meeting this mandate could be expensive, if not prohibitive...

Admittedly, we have little information on what the actual cost of removal will be. Unfortunately, the administration, in developing the mandate, failed to ask the states how much they thought it would cost. The administration also failed to determine what other possible adverse effects this requirement would have on state juvenile justice practices.

What little information we have reveals that this new requirement might have a severe adverse effect on juvenile justice systems in areas of low population density. On the other hand the same body of evidence suggests that many areas should have little difficulty complying simply because they have a more sophisticated and elaborate system of correctional facilities which can accommodate separating adults from juveniles...

All my amendment does is to provide the essential flexibility to allow the financially strapped states to participate in the program without undermining the complete removal mandate." (126 Cong. Rec. H 10929, November 19, 1980)

In explaining the amendment providing an exception for areas characterized by low population density, Representative Coleman stated:

> "It is the intention of this amendment to direct the Administrator of the Office of Juvenile Justice and Delinquency Prevention to liberally grant exceptions to the complete removal requirement, where such exceptions are appropriate. In identifying those areas characterized by low population density, I would anticipate that [a] definition maximizing the number of low population areas to be covered by the exception would be chosen. In recognizing the special needs of these areas in raising funds for the construction or operation of secure jails or lockups would be viewed as legitimate 'special needs'. It would be totally inappropriate, in my view, for the administration to second guess the budget priorities set within the states that led to a decision not to fund the construction or operation of a juveniles-only facility.
>
> The provision in the amendment specifying that exceptions to the complete removal requirement shall be granted only where no acceptable alternative exists, refers to the acceptability of the alternative to the state or locality. It is not in the federal government's role to determine what an acceptable alternative is." (Cong. Rec., ibid.)

Concerning the report to Congress on the cost and effect of implementing the jail removal amendment, Representative Coleman offered the following:

> "The report to Congress required under this amendment will provide sufficiently detailed information on the complete removal requirement to enable us to legislatively review it, if necessary. The generation of detailed information on the costs to the states of the complete removal requirement is the principal purpose of the report. I would anticipate that the Administrator would direct the National Institute on Juvenile Justice and Delinquency Prevention to conduct the research necessary to furnish this report to Congress. I would also anticipate that NIJJDP would contact each of the states and territories to determine their estimate of the costs and effects of the requirement in their jurisdictions. The responses of these authorities to the questions posed by NIJJDP would be included as an appendix to the report.
>
> This report to Congress also includes information on possible adverse ramifications which may arise as a result of the complete removal requirement. One potential adverse ramification is the possibility that the requirement could result in an increased rate of juvenile incarceration. A second potential adverse ramification is that requirement could result in the waiver of a greater number of juveniles to the criminal court for trial as adults, and possible incarceration in adult facilities. A third potential ramification is that juveniles who are released into the community will commit subsequent delinquent acts. In this regard, the study would include information on what happens to such youth after their release.

The report to Congress required under this amendment will also include legislative recommendations as deemed appropriate by the Administrator. It is the intention of the amendment in requiring legislative recommendations to be made that Congress will have the opportunity to act on the findings included in the report as soon as possible after their submission." (Cong. Rec., id. H 10929-10930)

There is an ambiguity in the language of Section 223(a)(14) with regard to the special exception to the jail removal requirement that is not fully clarified by Representative Coleman's remarks. That ambiguity is whether Section 223(a)(14) sets forth a single exception which recognizes the special needs of areas characterized by low population density with respect to the detention of juveniles, permitting in such areas only the temporary detention in adult facilities of juveniles accused of serious crimes against persons. See Issue 1 and answer below.

II. Current Practice

Section 223(a)(13) of the Juvenile Justice Act prohibits the confinement of juvenile delinquents, status offenders, and nonoffenders "in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges...." Section 223(a)(13) has been administratively interpreted by OJJDP as requiring sight and sound separation of juveniles and adult offenders in institutions. Jails and lockups are two types of institutions where separation will no longer be enough except in the exception areas established by statute and guideline. Even where exceptions to complete removal apply, the separation requirement would continue to be applicable.

III. Issues

1. What is the scope of the exception(s) to the jail removal amendment provided under Section 223(a)(14)? Does Section 223(a)(14) create exceptions to: (1) recognize the special needs of areas characterized by low population density with respect to the detention of juveniles; and (2) permit the temporary detention in adult facilities of juveniles accused of serious crimes against persons--or does it permit a single exception to the jail removal amendment which will allow only areas characterized by low population density to temporarily place juveniles charged with serious crimes against persons, in adult facilities?

   There are three conditions, all of which must be present to qualify as an exception to the requirement that no juvenile be placed in an adult jail or lockup. First, it must be an area characterized by low population density with respect to the detention of juveniles; second, the juvenile must be accused of a serious crime against person; and third, there must be no existing acceptable, alternative placement available. When all three of these conditions are met, the accused juvenile may then be temporarily detained in an adult jail or lockup.

   On February 3, 1981, OJJDP sent a letter requesting that Congressman Ike Andrews, Chairman of the House Subcommittee on Human Resources, clarify the exception language of Section 223(a)(14) that resulted

from Representative Coleman's floor amendment. Representative Andrews responded on February 17, 1981, as follows:

"You are completely correct that the 'exception language' is intended to establish a single exception applying only to low population density areas. Only in such areas would the temporary detention in adult facilities of juveniles accused of serious crimes against persons be permitted should no acceptable alternative be available."

and

"...there is no question that the intent of the law, based on my compromise with Mr. Coleman after consultation with the Administration, is to establish only a single exception. I believe you will find concurrence on this from Mr. Coleman and from all concerned with the drafting of the provision. Efforts to have the section interpreted differently can only come from those who were in no way involved with the drafting of the amendment."

2. On what basis will the statutory exception to the jail removal amendment be considered? State-by-State? County (or municipality) by county (or municipality)? Other?

   OJJDP will consider a State's request for the limited exception to the jail removal requirement on any geographic basis which meets the "low population density" criteria. This may be statewide, regional, contiguous multi-jurisdiction areas, or on a county-by-county basis.

3. For purposes of determining whether a State has made an "unequivocal commitment" to full compliance with the jail removal amendment, what constitutes an "appropriate executive or legislative action"?

   An appropriate executive or legislation action is an action which demonstrates an unequivocal commitment on the part of the governor, the executive branch of the State, or the legislative body of the State. This action can be in the form of an executive order, acceptance of the formula award with the express understanding that such acceptance is tantamount to an unequivocal commitment on behalf of the governor, or specific legislative action which constitutes an unequivocal commitment.

4. For purposes of development of the juvenile justice plan and compliance monitoring, when does the jail removal requirement take effect? Must baseline data be included in the December 31, 1980 monitoring report? If not, when would it be due? For what period and on what basis should baseline data be developed?

   The jail removal requirement took effect on December 8, 1980. Thus, the 5 year time period following the date of enactment ends on December 8, 1985. A plan for jail removal will be required as part of the FY 1982 formula grant plan. However, baseline and current data regarding Section 223(a)(14) will not be required until the 1981 monitoring report, due on or before December 31, 1981.

At a minimum, the reporting period for Section 223(a)(14) should be the same length used by the State in reporting compliance with the DSO and Separation requirements. However, OJJDP is considering requiring that all States use at least a 4 to 6 month minimum reporting period for reporting compliance with Section 223(a)(12), (13) and (14). This minimum reporting period may be accomplished in a phased effort during the next two years. The base reporting period for Section 223(a)(14) may be calendar year 1980, fiscal year 1981, or any other period which includes December 8, 1980.

5. What are "areas characterized by low population density" with respect to the detention of juveniles"?

   OJJDP has not defined or developed specific criteria to determine what areas may be characterized as "low population density with respect to the detention of juveniles." During the coming weeks, the Office will work with CJC's and other organizations to develop criteria and define this term. Once this has been done, it will be published for comment in the Federal Register, then incorporated into State Plan Regulations by OJJDP.

6. For what period of time may juveniles accused of serious crimes against persons be "temporarily" detained in adult jails and lockups pursuant to the exceptions provided under Section 223(a)(14)?

   Because the exception only deals with accused juveniles, a maximum 48 hour period will be proposed by OJJDP for States to temporarily detain such juveniles in adult jails or lockups.

7. Will States be permitted, for monitoring purposes, a "grace period" in which they may temporarily detain a juvenile in an adult jail or lockup without penalty similar to the 24-hour "grace period" currently permitted with respect to the Section 223(a)(12)(A) deinstitutionalization mandate?

   It is OJJDP's position that juveniles should not be placed in an adult jail or lockup for any period of time. However, for the purpose of monitoring and reporting compliance with the removal requirement, the House Report stated that it would be permissible for OJJDP to permit States to report, for monitoring purposes, only those juveniles held in adult jails or lockups in excess of six hours. This six hours would permit the temporary holding in an adult jail or lockup by police of juveniles arrested for committing an act which would be a crime if committed by an adult for purposes of identification, processing, and transfer to juvenile court officials or juvenile shelter or detention facilities. Any such holding of juveniles should be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, but in no case overnight. Section 223(a)(13) would prohibit such accused juvenile offenders from having regular contact with adult offenders during this brief holding period. Under no circumstances, however, will OJJDP regulations permit a status offender or nonoffender be detained, even temporarily, in an adult jail or lockup.

8. Against what standard will "full compliance" with the jail removal amendment be assessed?

   Full compliance with the jail removal amendment will be assessed using a de minimis standard similar to that provided in relation to DSO. This de minimis criteria/standard for the removal from jail requirement will incorporate the exception developed for low population density areas.

9. For purposes of Section 223(a)(14), who determines whether "an acceptable alternative" exists to the temporary confinement of juveniles accused of serious crimes against persons in adult jails and lockups? What is the basis for that determination?

   Each individual State will be responsible for developing specific and objective criteria which will be used in making determinations as to whether an acceptable alternative exists.

10. What are "serious crimes against persons"?

    Section 103(14) of the Act defines "serious crimes." Those crimes enumerated in this section which are crimes against a person will be considered the applicable "serious crimes against persons" pursuant to the Section 223(a)(14) provision.

11. Does the five-year time frame which began the date of enactment of the 1980 Amendments apply to States which elect not to participate in the formula program until after enactment of the Amendments or to States which do not participate for one or more years after the enactment of the removal amendment?

    Yes, any State not participating in the Act as of December 8, 1980 or which elects not to participate for an interim of one or more years must still comply with the statutory requirement for (substantial) compliance by December 8, 1985 if such State is participating at the end of this 5 year statutory time frame.

12. Which calendar year monitoring report will be used by OJJDP to determine whether a State is in compliance with Section 223(a)(14)?

    The 1985 report, due December 31, 1985, will be used to determine whether a State is in substantial or better compliance with the removal requirement, thus maintaining their eligibility to continue participation in the formula grant program.

13. Does the exception language of Section 223(a)(14) permit the temporary confinement of adjudicated delinquent offenders in jails and lockups for adults?

    No. Only juveniles <u>accused</u> of serious crimes against persons in low population density areas may be temporarily detained in an adult jail or lockup.

14. Will traffic offenders be considered adult offenders or juvenile offenders?

Juveniles within the scope of the removal requirement are those that are subject to the jurisdiction of a juvenile or family court for purposes of adjudication and treatment based on age and offense limitations established by State law.

15. What will be the position of OJJDP if a State makes an effort to lower the age of juvenile court jurisdiction in order to circumvent the objectives of the removal provision?

The Education and Labor Committee was concerned with this possibility. The House Committee Report states: "The new provision is not intended to encourage increased waivers of juveniles to criminal court, a decrease in the age of original or concurrent criminal court jurisdiction, or a lowering of the age of juvenile court jurisdiction for specific categories or classes of offenses committed by juveniles."

In addition, the Section 17a report regarding the impact of confinement of juveniles in jails must address the possible adverse ramifications which may result from the removal requirement. These possible adverse ramifications will include waiver and lowered age jurisdiction.

IV. Possible Language for Regulations

Removal of Juveniles from Adult Jails and Lockups

Pursuant to Section 223(a)(14) of the JJDP Act, the State Council shall:

(1) Describe in detail its specific plan, procedure, and timetable for assuring that beginning after the 5-year period following the date of enactment of the Juvenile Justice Amendments of 1980, no juvenile shall be detained or confined in any jail or lockup for adults. Refer to Paragraph _____ to determine the special (exceptional) circumstances which would have to exist to permit, in areas characterized by low population density with respect to the detention of juveniles and where no existing acceptable alternative placement is available, the temporary detention of juveniles accused of serious crimes against persons.

(2) Describe the financial, geographical, judicial, legislative, and administrative barriers which the State faces in removing all juveniles from adult jails and lockups. All such accounts shall include a description of the technical assistance needed to overcome those barriers. The barriers should be keyed to the plan for removing juveniles from adult jails and lockups noted in paragraph (1) above.

(3) For those States that have achieved "substantial compliance" with Section 223(a)(14) as specified in Section 223(c) of the Act, indicate the unequivocal commitment to achieve full compliance. Attach appropriate documentation.

MONITORING REPORT EXCEPTION

I. Evaluation of the Amendment

Section 223(a)(14) of the Juvenile Justice and Delinquency Prevention Act (redesignated Section 223(a)(15) by the Juvenile Justice Amendments of 1980) is amended to require that in accordance with regulations prescribed by the OJJDP Administrator, a state's juvenile justice plan shall:

> "(15). provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to ensure that the requirements of paragraph 12(A), paragraph (13), and paragraph (14) are met, and for annual reporting of the results of such monitoring to the Administrator except that such reporting requirements shall not apply in the case of a state which is in compliance with the requirements in paragraph (12)(A) and (13), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;" (new language underlined).

This amendment originated in the Subcommittee on Human Resources of the House Education and Labor Committee. In its report to the full House, the House Education and Labor Committee endorsed the Subcommittee's recommendation citing the thrust of the amendment as two-fold:

(1) to ensure that annual state monitoring reports "shall also include progress regarding the new requirement of removing juveniles from jails and lock-ups for adults" set forth in the new Section 223(a)(14); and

(2) to provide that "annual monitoring report requirements shall not apply to states which are fully in compliance with the deinstitutionalization, separation, and removal-from-adult-jail requirements and which have enacted state legislation which conforms to those requirements and which, in the opinion of the Administrator, contain sufficient enforcement mechanisms to ensure that the legislation will be administered effectively". (H. Rept. No.96-946, May 13, 1980 at p. 26)

In addressing the thrust of the amendment, the Committee stated that its intent was "to reduce paperwork, to provide an additional incentive for full compliance, and to encourage states to pass state legislation which conforms to the requirements of the Act". (H.R. No. 96-946, Supra).

With regard to the provision of the amendment that excepts states which have fully complied with certain mandates of the Juvenile Justice and Delinquency Prevention Act from submission of annual monitoring reports, there is a discrepancy between the language of the provision as set forth in Section 223(a)(15) of the Juvenile Justice Amendments of 1980 and the House Education and Labor Committee's explanation of that provision as set forth in its report. Section 223(a)(15) provides that in order to be excepted from submission of annual monitoring reports a state must be in compliance with Sections 223(a)(12)(A) (deinstitutionalization) and 223(a)(13)

(separation) and have enacted legislation which "conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively". The report of the House Education and Labor Committee states that the thrust of the amendment is to provide that annual monitoring report requirements "shall not apply to States which are fully in compliance with the deinstitutionalization, separation, and removal-from-adult-jail requirements (new Section 223(a)(14)) and which have enacted state legislation which conforms to those requirements and which, in the opinion of the Administrator, contain sufficient enforcement mechanisms to ensure that the legislation will be administered effectively". (Emphasis and parenthetical explanation added.)

II. Current Practice

States participating in the Juvenile Justice Act formula grant program are currently required to submit, by December 31 of each calendar year, annual monitoring reports documenting their progress towards compliance with Sections 223(a)(12)(A) and 223(a)(13) of the Juvenile Justice and Delinquency Prevention Act.

III. Issues

1. Must a State have achieved compliance with Sections 223(a)(12)(A), (13) and (14) and have enacted state legislation which conforms to these requirements and which contains sufficient enforcement mechanisms to insure that the legislation will be administered effectively to be exempted from the monitoring report requirements? With regard to Section 223(a)(12)(A) must a state have achieved full or substantial compliance with the deinstitutionalization requirement? Full compliance with de minimis failure?

   States must be found to have achieved full compliance with Sections 223(a)(12)(A) and (13) and have enacted State legislation which conforms to these requirements and which contains sufficient enforcement and monitoring mechanisms to insure that the legislation will be administered effectively to be excepted from the monitoring report requirement. States are not required to have achieved compliance with Section 223(a)(14) under this provision.

2. Must the State legislation conforming to the requirements of Sections 223(a)(12)(A) and (13) contain specific language setting forth the mechanisms which insure the subject mandates of the legislation will be administered effectively? May these enforcement mechanisms be administratively prescribed?

   States must demonstrate that the enforcement of the legislation is statutorily or administratively prescribed, specifically assigning authority for enforcement of the statute; specifying time frames for monitoring compliance with the statute; and setting forth adequate sanctions and penalties that will result in enforcement of compliance and procedures for remedying violations.

3. What criteria will the OJJDP Administrator establish to assess the adequacy of State enforcement mechanisms to insure that the requirements of Sections 223(a)(12)(A) and 223(a)(13) will be administered effectively?

The OJJDP Administrator will assess the adequacy of enforcement mechanisms on the basis of whether the State statute assigns authority for enforcement of the statute, specifies time frames for monitoring compliance with the statute, sets forth adequate sanctions and penalties, and prescribes procedures that will result in the enforcement of compliance. If, once a finding of adequacy is made, violations of the State statute are brought to the attention of the OJJDP Administrator, the OJJDP Administrator shall have the authority to investigate to determine whether the system is operating adequately. However, the State would have an opportunity to be heard before a finding of adequacy is withdrawn.

4. What is the standard for determining "compliance" with Section 223(a)(13)?

Section 223(a)(13) does not have attached to it a statutory substantial or full compliance standard as do Sections 223(a)(12) and (14) through Section 223(c).

As a result OJJDP needs to define "compliance" and "full compliance" as these terms are used in relation to Section 222(a)(13) in Sections 223(a)(15) and 223(d). OJJDP does not believe that Congress intended to distinguish between "compliance" and "full compliance" as these terms are used in the two sections. Rather, it seems clear that in both cases Congress intended that OJJDP determine that, for the State, the Separation mandate was complied with to the extent compliance could be achieved through law and policy change, plan implementation, and State and local enforcement efforts.

Therefore, OJJDP will propose the following compliance standard:

> Compliance with Section 223(a)(13) has been achieved when a State can demonstrate that:
>
> (1) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of Section 223(a)(13); or
>
> (2)(a) State law, regulation, court rule, or other established executive and judicial policy clearly prohibit the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(13);
>
> (b) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in (a) above;

(c) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances of noncompliance; and

(d) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in (a) above are such that the instances of noncompliance are unlikely to recur in the future.

5. If a State is not required to submit a Monitoring Report on 223(a)(14), how would OJJDP determine satisfactory progress? Compliance?

If a State is exempt from submission of annual monitoring reports pursuant to Section 223(a)(15), it is no longer required to submit annual monitoring reports on the status of compliance with Section 223(a)(14). With regard to the annual progress of the State in implementing its plan to achieve compliance with Section 223(a)(14), OJJDP will be provided general programmatic information in the annual performance report required by Section 223(a). Concerning compliance, OJJDP must make compliance findings at year 5 and year 7 of the time-frame permitted under Section 223(a)(14) and 223(c) for compliance with the jail removal amendment. Therefore, it will be necessary for the State to submit data which shows the status of compliance with the jail removal requirement at the conclusion of years 5 and 7 in order for OJJDP to make the required compliance findings. If the State does not provide OJJDP with adequate information on which to make such findings, the State's participation in the Act could be terminated.

6. Will technical assistance be available for a State that has no monitoring mechanism? What kind of TA?

Yes, TA necessary to establish an acceptable mechanism.

7. Will States that continue to be required to submit annual monitoring reports have to monitor all jails and lockups for the entire year, or or may those States select a shorter time period and/or a sample number of facilities to be monitored?

States should select a monitoring period which will adequately reflect the actual level of compliance. This period of time should be a minimum three to six month period which can be projected for a full year in a statistically valid manner. States not having complete data may request OJJDP approval to use a statistically valid and randomly selected sample of facilities.

IV. Possible Language for Regulations

States which have been found by the OJJDP Administrator to have achieved full complance or full compliance with de minimis exceptions with Section 223(a)(12)(A) and compliance with Section 223(a)(13) of the Juvenile Justice Act and which wish to be excepted from the annual compliance monitoring report must submit a written request to the OJJDP Administrator which demonstrates that:

A. State legislation has been enacted which conforms to the requirements of Sections 223(a)(12)(A) and (13) of the Juvenile Justice Act; and

B. The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

1. Authority for enforcement of the statute is assigned;

2. Time frames for monitoring compliance with the statute are specified; and

3. Adequate sanctions and penalties that will result in enforcement of compliance and procedures for remedying violations are set forth.

REALLOCATION OF FUNDS

I. Evaluation of the Amendment

Section 223(d) of the Act is revised to provide that:

> In the event that any State chooses not to submit a plan, fails to submit a plan, or submits a plan or any modification thereof, which the Administrator, after reasonable notice and opportunity for hearing, in accordance with (1) Sections 803, 804 and 805 of title I of the Omnibus Crime Control and Safe Street Act of 1968, determines does not meet the requirements of this section, the Administrator shall (2) endeavor to make that State's allotment under the provisions of section 222 (a) available to (3) Local public and private nonprofit agencies within such State for use in carrying out the purposes of subsection (a)(12)(A), subsection (a)(13) or subsection (a)(14). The Administrator shall (4) make funds which remain available after disbursements are made by the Administrator under the preceding sentence, and any other unobligated funds, available on (5) an equitable basis to those States that have achieved full compliance with the (6) requirements under subsection (a)(12)(A) and subsection (a)(13).

Key provisions of the revised section are designated by bracketed numbers and new language underscored. The following numbered comments relate to the correspondingly numbered provisions of the revised amendment of the Act.

1. Under the amended Act the Administrator must continue to give reasonable notice and opportunity for hearing in accordance with the cited sections of the Crime Control Act as amended by the Justice System Improvement Act, specifically 803, Notice and Hearing on Denial or Termination of Grant; 804, Finality of Determinations; and 805, Appellate Court Review.

2. The Administrator must "endeavor" to first make reallocated juvenile justice grant funds available to local public and private nonprofit agencies. This is somewhat less than a mandatory (shall) direction.

3. Prior to the 1980 amendments, a State's allotment under the provisions of Section 222 (a) had to be made available to public and private agencies for special emphasis prevention and treatment programs as defined in Section 224. This has been changed to specify local public and private nonprofit agencies within such State for use in carrying out the purposes of Sections (a)(12)(A) (deinstitutionalization), (13) (separation), or (14) (jail removal).

4. New language is added which directs the Administrator to make available all remaining unallocated and unobligated funds from nonparticipating States.

5. Funds are to be made available on an equitable basis to those States that have achieved full (rather than substantial) compliance with specified Act requirements.

6. The requirements specified are Sections 223(a)(12)(A) and (13).

Section 228(g) of the Act is also revised, as Section 228(e), to provide that reverted Special Emphasis funds will be reallocated in an equitable manner to States in compliance with the DSO and separation requirements, for Section 224(a)(5) purposes.

II. Current Practice

Section 222(a) requires that OJJDP allocate formula grant funds annually among all eligible States on the basis of relative population under 18.

Section 223(d) previously required that OJJDP endeavor to make the allocation of nonparticipating States and States whose plans were rejected after notice and opportunity for a hearing available for Special Emphasis program funding to public and private agencies in such nonparticipating States in order to aid establishment of community-based alternatives and to participating States that had achieved substantial or full compliance with the DSO requirement.

Section 228(g) provided that all reverted formula and special emphasis funds be reallocated to the Special Emphasis fund.

II. ISSUES

1. Will nonparticipating States be eligible to receive reallocated funds?

   Yes. For formula grant funds initially allocated to a State which chooses not to participate, fails to submit a plan in a timely manner, or has a plan rejected after notice and opportunity for a hearing, the Administrator must endeavor to make that State's allocation available to eligible recipients within such State.

2. Do reallocated funds retain their identity as formula grant funds or become Special Emphasis funds?

   The new statutory scheme does not specify whether reallocated funds become Special Emphasis funds or retain their identity as formula grant funds. However, the Administrator's general authority to award formula grant funds is limited by Section 221 to "States and units of general local government." Because the reallocated funds are to be made available to "local public and private nonprofit agencies within such State," a category of eligible recipients which is broader than those eligible for direct formula grant awards, it can be concluded that Congress probably intended the funds to be reallocated as Special Emphasis funds and then awarded in a manner consistent with the revised Section 223(d).

3. What are local public and private nonprofit agencies?

   A local public agency may be defined as a unit of local government, combination of such units, or any department, agency, or instrumentality of any of the foregoing (CF §103(11) definition of "public agency").

A local private nonprofit agency may be defined as any private nonprofit agency or organization that provides program services within an identifiable unit or combination of units of general local government.

4. In non-participating States who will determine the priorities for expenditure of reallocated funds?

   The choice of program purpose(s), i.e. DSO, separation, or jail removal, is a matter within the Administrator's discretion and could vary from State to State.

5. What is the equitable basis on which funds will be distributed to compliant States?

   An equitable basis would be any basis which the Administrator determines to be fair and just, and which contributes to meeting the objectives and purposes of the Act. Equitable bases would include population, need, competitive programming, etc.

6. What is considered "full compliance" with Sections 223 (a)(12)(A) and Section 223(a)(13)?

   (a)(12)(A)--100% or the State meets criteria for full compliance with de minimis exceptions.
   (13)--OJJDP will propose to use the criteria that are set forth under Issue 4 of the Monitoring Report Exception issue paper for determining "full compliance" with Section 223(a)(13).

7. What are "other unobligated funds"?

   Reverted and deobligated formula grant funds.

8. What options does OJJDP have available for process methods of awarding funds to nonparticipating States under 223(d)?

   Unlimited. Including through State Council, other State, local or private agency, and competitive discretionary program(s).

9. What if the factors leading to a State's noncompliant status are directly related to local policies over which the State has no control?

   The State has responsibility to insure that it has the power and authority to achieve the statutory requirements (Section 223(a)(2)).

IV. Possible Language for Regulations

OJJDP plans to issue a comprehensive policy on the allocation and reallocation of formula and Special Emphasis grant funds.

LOBBYING

I. Evaluation of the Amendment

Section 227(c) is added to the "General Provisions" section of Title II. It provides the following restriction on the use of formula and Special Emphasis grant funds:

> (c) Funds paid pursuant to section 223(a)(10)(D) and section 224(a)(7) to any public or private agency, organization, or institution or to any individual (whether directly or through a State criminal justice council) shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence a Member of the Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure by the Congress, any State legislature, any local council, or any similar governing body, except that this subsection shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved. The Administrator shall take such action as may be necessary to ensure that no funds paid under section 223(a)(10)(D) or section 224(a)(7) are used either directly or indirectly in any manner prohibited in this subsection.

The amendment was offered during House floor debate on H.R. 6704 by Representative Kramer on November 15, 1980 (126 Cong. Rec. H10928-10929). Representative Kramer stated that the amendment was intended to place "a reasonable restriction and limitation on lobbying activities under the Juvenile Justice Act for the advocacy program". There is no further legislative history on the amendment.

However, there was a series of restrictive lobbying amendments offered in the full Education and Labor Committee by Representative Kramer. All were defeated. They would have prohibited the direct or indirect use of Federal funds to lobby Congress, State or local legislative bodies, regulatory agencies, or to subsidize court suits on behalf of youth.

Section 223(a)(10)(D) provides the following advanced technique area for formula grant funds:

> (D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth impacted by the juvenile justice system;

Section 224(a)(7) provides the following special emphasis program area:

> (7) develop and support programs stressing advocacy activities aimed at improving services to youth impacted by the juvenile justice system;

II. Current Practice

OJARS Financial Guideline M 7100.1B, Chap. 5, Par. 75, October 20, 1980, provides:

75. LOBBYING.

a. No part of any grant shall be used:

(1) For publicity or propaganda purposes designed to support or defeat legislation pending before legislative bodies;

(2) To pay, directly or indirectly, for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a member of Congress, to favor or oppose, by vote or otherwise, any legislation of appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation.

b. This provision SHALL NOT limit the following types of activities:

(1) Testimony before legislative bodies reviewing the effectiveness of grant programs; or

(2) Introduction and support in the State legislature of general statutory reform, such as criminal code revisions, court reform, etc.

The financial guide provision applies to Juvenile Justice Act funds, both formula and categorical. It is based on 18 U.S.C. §1913 [75(a)(1)] and Section 607(a) of the annual Treasury, Postal Service, and General Government Appropriations Act [75(a)(2)].

III. Issues

1. Does the statutory prohibition apply to all recipients for their advocacy activities or only to those specifically funded under the cited sections?

The lobbying prohibition applies specifically, and at a minimum, to recipients of formula and discretionary grant funds awarded under the authority of Sections 223(a)(10)(D) and 224(a)(7). While the general lobbying prohibition of the Financial Guideline continues to apply to all recipients of OJJDP grant funds, the more restrictive prohibition of the Juvenile Justice Act is aimed specifically at advocacy program recipients.

2. Is the provision to be applied prospectively (to grants funded on and after December 8, 1980) or retroactively to include grants awarded prior to December 8, 1980?

The lobbying prohibitions will be applied prospectively to grants funded on and after December 8, 1980. It is an accepted rule of statutory construction that, absent a clear intent to the contrary, substantive statutory provisions are given prospective application only.

3. What types of grantee activities are impermissible? Permissible?

The new lobbying prohibition is patterned after 18 U.S.C.. §1913 of the Federal Criminal Code, which is a restriction on Federal officials that prohibits lobbying the United States Congress.

Purposes of Lobbying Restrictions

(1) Regulate conduct to deter abuse of position and authority.

(2) Keep public opinion free of undue government supported influence.

(3) Prohibit use of Federal funds to improperly influence or apply pressure on the legislative process.

Examples of Impermissible Activities

(1) Expenditure of funds for personal services or publications intended to influence pending legislation by "molding public opinion."

(2) Expenditure of funds for purpose of introduction and support of special interest legislation in Federal, State, or local legislative bodies.

(3) Expenditure of funds to support or finance appeals addressed to members of the public, e.g., (letter campaign, speeches) suggesting or urging contact with elected representatives or other public officials to obtain support or opposition to pending legislation or to urge them to vote in a particular manner.

(4) Expenditure of funds for activities intended to influence the legislative judgment of individual legislators or the legislature as a whole that are not directed toward the merits of an issue or of pending legislation.

Examples of Permissible Activities

(1) Present to the public information concerning the merits of pending legislation or an initiative proposal where: (1) grantee fairly presents both sides of an issue; and (2) does not encourage voters to cast ballots in a particular manner.

(2) Presentation of organizational policy or views on issues to the legislature or the public where not intended to influence legislation or where directed toward the merits of an issue or of pending legislation.

(3) Testimony before State legislature on legislative issues or pending legislation.

(4) Holding citizen information or input meetings to discuss merits of pending legislation.

The financial support of activities by a grantee that are permissible under Federal law and regulation does not make such costs allowable. The activity must also be within the scope of the purposes of the grant, i.e., if an advocacy grantee's objectives and activities have no direct applicability to the Federal legislative process then no costs related to Federal congressional activity, whether prohibited or not, would be allowed.

4. Is lobbying activity related to regulatory or other nonlegislative agencies, or litigation undertaken to protect the rights of youth, impacted by the amendment?

   No.

5. What actions will the Administrator take to insure that funds are not used in a manner inconsistent with Section 227(c)?

   OJJDP plans to issue guidance to the States in the FY 1981 Formula Grant guideline and to modify the Financial Guideline (M 7100.B, Chap. 5, Par. 75, October 20, 1980) to set forth the additional lobbying restrictions imposed by Section 227(c). In the interim, States are encouraged to appropriately special condition advocacy subgrants.

6. Will OJJDP establish requirements and language for a lobbying special condition to be applied to all subgrant awards?

   OJJDP will develop a condition based upon the current lobbying restriction as modified to reflect the principles of the Section 227(c) amendment.

7. Is State legislative advocacy on juvenile justice issues prohibited for SAG's under the lobbying provision?

   No, unless they receive a grant under Section 223(a)(10)(D). However, SAG's and SAG members are subject to the lobbying prohibitions established by the Financial Guideline.

8. Section 224(a)(7) states how not to. How can lobbying be accomplished aside from official request?

   Lobbying cannot be accomplished under advocacy programs.

9. Isn't the Section 223(a)(15) monitoring exception language, encouraging participating States to enact laws mandating DSO, separation and jail removal, inconsistent with the prohibition of 227(c) that funds may not be used to influence an elected official to favor or oppose legislation?

   It is anticipated that legislation will be enacted through the normal processes and that Federal funds will not be used for lobbying.

MISCELLANEOUS ISSUES

1. Does the new emphasis on programs for juveniles who commit serious and violent crimes or who are chronic repeat offenders mean that Congress intends to deemphasize DSO, separation, and jail removal?

   No. The new emphasis was included to focus attention and add specific program authority for such programs. States that have achieved substantial or full compliance with Sections 223(a)(12) and (13) should now be in a position to consider additional programs and services for juveniles who commit serious and violent crimes.

2. How will the National Advisory Committee go about obtaining input from juveniles under the juvenile justice system?

   This is a matter which the NAC will need to consider. It will be an early agenda item for the new NAC.

3. Does the statutory continuation policy, which was eliminated by the 1980 Amendments, apply to project awards made after January 1, 1981?

   Section 228(a) has never been considered applicable to formula program subgrant awards made by the States. For other JJDP Act funds, only projects which expire before December 8, 1980 are covered by Section 228(a). In any event, OJJDP will apply the continuation policy recently established in the Federal Register to any continuation application.

4. To what extent can the NAC standards be revised?

   They cannot be revised in the sense of the NAC undertaking major revisions each time the composition of the NAC changes. Section 247(d) provides only for the "refinement" of standards which would be limited to fine tuning, expansion of commentary, identification of additional options, and the like. A clear indication that the standards mission of the NAC is basically completed is that the statutory Standards Subcommittee of the NAC was eliminated by the Juvenile Justice Amendments of 1980.

5. Must 5% of Special Emphasis funds be earmarked to territories? Actually awarded? Does this apply to the FY 1981 budget?

   Yes, 5% of the Congressional appropriation for the Special Emphasis program will be made available to the extent that it is needed to meet the special needs of the five territories specified in the Act. The requirement will be applied in FY 1981.

6. From what budget are TA contractors (A.D. Little, etc.) paid? How much was paid to all contractors in FY 79, 80, 81? What percent relationship did this payment have to total budget?

   Budget for TA was $3 million for each of the fiscal years 79, 80, and 81 of the overall $100 million OJJDP budget.

7. Will mechanisms be established whereby States have a role in the formulation of guidelines rather than simply being in a position to comment on the guidelines after they have already been formulated.

   The purpose of this meeting as well as future meetings with interested public and private organizations and the draft Federal Register guidelines, is to obtain such input. OJJDP seriously considers your oral comments prior to external clearance and all written comments made in external clearance.

8. Training—new emphasis in Act, e.g., see Section 204(b)(5) and National Institute Program. See Sec. 244(3) and Sec. 248. What's the significance, if any?

   Probably very little, the provisions simply reflect a clarification of existing training authority.

9. If the JJ Act appropriation is cut to say $60-$70 million in FY 82, won't this whole program collapse of its own bureaucratic weight, as LEAA did?

   The major mandates of the Act have been significantly reached, i.e., DSO and separation have largely been met. The new jail removal requirement is 5 years away. The guidelines and regulations have been reduced and simplified. The level noted is above the appropriation for implementation of the Act in its first three years. After the three years, 50 States were participating. Therefore, we believe that a temporary decrease in the appropriation to the $60 to $70 million level would not cause the collapse of the program.

10. Equitable assistance—what is a "minority"?

    We will utilize the Bureau of Census standard definition of "minority." The following groups are considered minorities by the U.S. Department of Commerce, Bureau of Census: Native of Guam or Hawaii; Black; American Indian or Alaska Native; Asian or Pacific Islander; Hispanic.

11. What does "disadvantaged" mean? Not what it allegedly includes, but what else are you talking about? Low income? "Targeted" assistance is misrepresenting the statutory language of the Act.

    Any identified group of children who receive disparate treatment in the juvenile justice system would qualify as disadvantaged youth.

12. If there are general programs for achieving institutional change in school systems to prevent juvenile delinquency and there are a certain percentage of disadvantaged youth in that school system, does that count toward an "equitable" distribution?

The provision requires that States go through a process of identifying the special needs of disadvantaged youth, determining whether those needs are met through existing programs and, if not, develop programs designed to deliver those identified needs. If the needs are being met, there is no need to specifically target resources to deal with those population groups.

13. With the emphasis being to reduce paperwork, the required new reports in the amended Act do not appear to be well coordinated in the issue papers. Our recommendations are that the annual performance report, the State advisory group report to the governor, the compliance monitoring report, and the report on concentration of State effort be condensed into one report due in December. This would provide opportunity to fully analyze the previous 12 months of the plan, coordinate with State legislative cycles, and reduce paperwork and the burden of reporting at several times. Is this possible?

    Yes, if they are all submitted with the annual application which currently is due by August 31.

14. What are the implications of the statutory emphasis on "serious offenders" for less populous States which have few such offenders?

    The emphasis on juveniles who commit serious and violent crime is not a mandated emphasis. The Act simply provides specific authority to address that population.

15. Why is there an emphasis on "special education"? Where did it originate, ramifications, etc.?

    It originated in the Senate and it is likely it was introduced at the request of special interest groups. The impact is that it adds new authority and an emphasis in this area.

16. What is OJJDP's best guess re scope of evaluation requirements under the new legislation? Distinguish between evaluation and monitoring.

    Evaluation requirements have not been changed. Monitoring measures progress in project implementation while evaluation measures performance, i.e. did the program or project meet its goals and objectives.

17. What are the differences, if any, between present audit and accountability requirements (M 7100) and those which might be required of OJJDP as a stand alone program?

    None.

18. What are the Technical Assistance Plan requirements for Fiscal Year 1982?

CJC's wishing to receive Technical Assistance through OJJDP must indicate within their plan their Technical Assistance needs. The identification of Technical Assistance needs must be related to the implementation strategies and programs contained in the plan. Specific directions regarding the development and inclusion of Technical Assistance needs and priorities in the plan will be provided in the FY 1982 Application Kit. Any State not wishing to apply for Technical Assistance should so indicate in their plan submission.

ADDRESS BY REPRESENTATIVE E. THOMAS COLEMAN OF MISSOURI, MEMBER UNITED STATES HOUSE OF REPRESENTATIVES, OPENING THE KANSAS CITY CONFERENCE, FEBRUARY 12, 1981.

Thank you for the opportunity to welcome this distinguished group of state criminal justice planners and administrators to my home town of Kansas City.

In welcoming you here to discuss the implementation of the Juvenile Justice Amendments of 1980, I am particularly pleased to note that the State of Missouri is, once again, participating under the juvenile justice formula grant program. For a while during the Congressional consideration of the Juvenile Justice Amendments, it looked as though Missouri would be unable to participate in the program during 1981. Fortunately, provisions in the reauthorization now permit Missouri the funding it needs to come into compliance with the full deinstitutionalization mandates of the Juvenile Justice Act.

The particular provision in the Act which benefitted Missouri was a change in the definition of substantial compliance for purposes of meeting the Act's deinstitutionalization mandate. In changing this provision, the Congress was reacting to its perceptions of what the needs of juvenile justice administrators in the states were. It was in providing such input and in working continuously for a bill at all that the input of many leaders of this Association should be recognized. It is not too much to say that without the efforts of some of these leaders, the Juvenile Justice Amendments of 1980 would never have been enacted last December.

Before I step down I would like to briefly comment on two amendments to the Act that I think will improve juvenile justice programs in the states:

(1) The first of these amendments is the new mandate in the Act calling for the removal of all juveniles from adult jails and lockups within a maximum of seven years after the date of enactment. This amendment was adopted by the committee as a reflection of the belief that even with sight and sound separation, juveniles can be irreparably harmed by incarceration in adult facilities. During Congressional debate on this amendment, not one Member, on either the Democratic or Republican side, questioned the rationale behind the need for removing juveniles from adult facilities. What they did question was the cost to the states in meeting the new requirements.

In the opinion of myself and many other Members, there was not a sufficient factual basis on which to evaluate the cost of the mandate to the states at the time that we considered the complete removal amendment. What was known was that some states anticipated that the cost of building juveniles only facilities would cost them millions of dollars while others anticipated little or no trouble in meeting the mandate. My amendment, which was adopted on the Floor, addresses the concerns of the states without removing the new mandate from the Act.

The amendment contained two principal provisions:

(1) It provided that in promulgating regulations the needs of areas characterized by low population density would be taken into account by OJJDP and that in such areas juveniles accused of serious crimes against persons could be temporarily held; and

(2) It called for an 18 month study of the costs and possible adverse effects of the new mandate to the states in order to provide Congress with an accurate assessment of the impact of the new mandate on state juvenile justice systems. I should point out that the legislative history of this provision specifically directs OJJDP to solicit detailed input from the states and to include this input as part of its report to Congress. It was my hope in offering the amendment that the manner in which the study is conducted would make the resulting report and recommendations to the Congress non-controversial. It is also my hope that any recommendations resulting from the findings in this study will be quickly acted upon by the Congress. I believe that stability in the federal mandates associated with juvenile justice funding must be achieved if this program is to succeed on the state and local level.

(3) The second amendment I would like to briefly discuss was the most controversial change in the Juvenile Justice Act considered during the reauthorization. This amendment, which was sponsored on the Floor by Representative John Ashbrook of Ohio, creates an exception in the Act's prohibition on the incarceration of status and non-offenders to permit the holding in secure facilities of juveniles found to be in violation of a "valid court order."

The purpose of the Ashbrook amendment was to restore authority to juvenile courts to enforce their orders in a manner consistent with the overall purposes of the Act. The target group of the amendment was the incorrigible juvenile who repeatedly ignores the warnings and orders of the juvenile court as a result of knowing that the court is powerless against them. In my opinion, it is entirely consistent with the purposes of the Juvenile Justice Act to exercise coercive authority over such a juvenile. I believe that the legislative history of this amendment safeguards its application in state and local juvenile courts from the types of abuses many observers feared while the amendment was pending before the Congress. The legislative history of the amendment leaves no doubt that full due process rights must be afforded to the juvenile in any proceeding regarding a court order that could result in their incarceration. These rights were specifically listed in the 1967 Supreme Court case of In Re Gault. These Gault rights include the right to counsel, the right to present witnesses and the right to seek an appeal in an appropriate court. I am confident that the administration of juvenile justice in state and local courts will significantly improve as a result of the adoption of this amendment.

In closing I would like to reflect on the tremendous strides forward in juvenile justice that have taken place since 1974. What was originally a program whose basic philosophy was openly questioned by some observers now

enjoys nearly universal acceptance. No longer are questions such as how juveniles in trouble with the law be treated or should runaways be locked-up asked. Instead debate on juvenile justice matters almost universally centers on the best methods of meeting with recognized needs of juveniles in a scientific, compassionate way.

I am hopeful that the progress in the field of juvenile justice which began under the Ford Administration will continue under our new President. I believe that while total appropriations made under the Act for state juvenile justice programs are likely to be cut along with those of every other program in the federal government, the program will continue to grow in its effectiveness in meeting the basic purposes of the Juvenile Justice Act.

In the new Congress the personalities dealing with juvenile justice are somewhat changed. Senator Arlen Spector of Pennsylvania is chairing a new Senate Juvenile Justice Subcommittee. In the House of Representatives on the Subcommittee on Human Resources, I am being succeeded as Ranking Minority Member by Representative Tom Petri of Wisconsin. I personally will continue to serve on this subcommittee and will be active in Congressional oversight over the implementation of the changes included in the 1980 amendments. I hope that over the next two years all of you will let the Committee know of your concerns regarding the implementation of the bill we will be discussing today.

Once again, I'd like to thank you for the opportunity to speak before this group today. Welcome to Kansas City.

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